

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:18-cv-197-RJC**

**BRUCE RHYNE and JANICE RHYNE,)
)
Plaintiffs,)
)
vs.)
)
UNITED STATES STEEL)
CORPORATION, *et al.*,)
)
Defendants.)
)**

PLAINTIFFS' NOTICE OF FILING OF DEPOSITION DESIGNATIONS

Plaintiffs hereby file certain deposition designations along with objections and counter-designations for the following deponents:

1. Steven Gore
2. James Graeber
3. Thomas Keenan
4. John Masaitis (Davis)
5. John Masaitis (Krem)
6. Myron A. Mehlman
7. Mark Monique (Lee)
8. Mark Monique (Thomas)

O = Overruled

S = Sustained

Dated: September 2, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served by e-filing via the Western District of North Carolina's e-Filing Portal to all counsel of record on September 2, 2020

Dated: September 2, 2020

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Exhibit 1



Plaintiffs' designations are in yellow

Defendants' collective designations are in green

Deposition of
Steven D. Gore, M.D.

Date: November 4, 2019

Case: Bruce Rhyne and Janice Rhyne v. United States Steel Corporation, et al.

No. 3:18-cv-00197-RJC-DSC

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

BRUCE RHYNE and JANICE)
RHYNE,)
 Plaintiffs,) Case No.:
 vs.) 3:18-cv-00197-RJC-DSC
UNITED STATES STEEL)
CORPORATION, et al.,)
 Defendants.)

The deposition of STEVEN D. GORE, M.D., called for examination pursuant to Notice and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Roselind C. Pisano, C.S.R. No. 084-002031, Certified Shorthand Reporter and a Notary Public within and for the County of Cook and State of Illinois, at The Blake Hotel, 9 High Street, New Haven, Connecticut, on November 4, 2019, commencing at the hour of 9:31 a.m.

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Steven D. Gore, M.D.
November 4, 2019

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I N D E X

WITNESS

EXAMINATION

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E X H I B I T S

NUMBER

MARKED FOR ID

Dr. Gore Deposition Exhibit

Nos. 1 and 2	5
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(Original exhibits were given to the court reporter,
scanned and returned to Mr. Gray.)

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Steven D. Gore, M.D.
November 4, 2019

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(Witness sworn.)

STEVEN D. GORE, M.D.,
called as a witness herein, having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. GRAY:

Q. Dr. Gore, good morning. I'm Tim Gray. We
have met before.

A. We have. Good morning to you.

Q. How are you, sir?

A. I'm well. Thanks.

MR. GRAY: I'm going to attach two things as
exhibits. Number 1 is the deposition notice that we
issued in this case, and Exhibit 2 is a report signed
by you and dated October 1, 2017.

(Dr. Gore Exhibit Nos. 1 and 2
marked for identification.)

BY MR. GRAY:

Q. I'm going to hand those both to you.

A. Okay.

Q. Irrespective of whether you recall the
specifics of that deposition notice, have -- other
than published literature, to your knowledge, are all
of the materials that you've reviewed in preparation
for this case Mr. DuPont has?

1 **A. Yes, absolutely.**

2 Q. Either he sent it to you or you sent it to
3 him?

4 **A. Absolutely.**

5 Q. And then that report marked as Exhibit 2,
6 that's the report you've generated in this case?

7 **A. Yes. Two years ago.**

8 Q. What have you done since that report was
9 generated in this case?

10 **A. I reviewed my report, I reread some of the**
11 **medical records. I think that's about it.**

12 Q. We received a Dropbox link from Mr. DuPont.
13 I'm going to walk through some of the things that
14 were on that link.

15 **A. Okay.**

16 Q. Some of these may be things he provided to
17 you that you may or may not have reviewed, so my
18 questions are going to be pretty brief.

19 **A. Okay.**

20 Q. For example, we received the deposition of
21 Dr. Diane Howard. Did you review that deposition?

22 **A. I think -- was that done two years ago?**

23 MR. DUPONT: Yes.

24 THE WITNESS: Yes, I had reviewed it, because I
25 referenced it in my report, but I haven't recently.

1 BY MR. GRAY:

2 Q. And then, of course, there is a reference to
3 Mr. Petty's report which you reference in your
4 report.

5 A. Yes.

6 Q. There is a reference to a report by an
7 expert named Deeds?

8 A. Deeds?

9 Q. D-e-e-d-s.

10 A. Never heard of him.

11 Q. Okay. That's from one of the defendants.
12 You haven't reviewed that report?

13 A. I don't know anything about it.

14 Q. You don't recall?

15 A. I recall I haven't.

16 Q. This will be a compound question. Do you
17 recall reviewing any of Dr. Dominic Alexander,
18 Dr. Peter Shields, David Pyatt or Dr. Natelson --
19 have you reviewed any of their reports in this case?

20 A. I glanced at Dr. Shields' report last night,
21 but not in great detail. I skimmed it.

22 Q. Did you have any specific criticisms or
23 critiques?

24 Obviously you disagree about some things, as
25 stated in your report.

1 Is there anything, other than what's already
2 in your report, that you would say is a specific
3 critique of Dr. Shields' report based upon your quick
4 review last night?

5 A. I want to emphasize, it wasn't a thorough
6 review. It was far too long for me to do that.

7 Yes, I have some problems with Dr. Shields'
8 report. First of all, I've gone back and looked
9 online at his CV. He's certainly not a leukemia
10 physician, he's not a -- actually he's not
11 hematopoietic malignancies at all.

12 I understand that he's a cancer biologist
13 and seems to take care of lung cancers. But he
14 doesn't appear to be somebody who assesses leukemia
15 risk on a routine basis.

16 But that's just kind of my assessment of who
17 he would be as a witness.

18 He comments that the finding, while the
19 patient was in remission, of FLT-3/NPM-1 mutated cell
20 in the blood would indicate a germline predisposition,
21 and that is patently false because, first of all, it
22 was never detected again. If it was a germline
23 mutation, you would still find it, and you would find
24 it in the bone marrow as well. And it wouldn't go
25 away.

1 Second of all, NPM-1/FLT-3 mutations are
2 never germline. That just betrays kind of ignorance
3 of leukemia genetics to me. I was a little surprised
4 that that was there. I did notice that.

5 I also noticed that he goes to the Bert
6 Vogelstein paper that says a lot of cancers are just
7 random. And I am certainly familiar with that work.

8 But I don't think Dr. Vogelstein would want
9 his paper being interpreted to say that there aren't
10 also environmental factors on top of some randomness.
11 That's just misconstruing their mathematical model.
12 To me, that's a -- it's irrelevant. It's an
13 obfuscating piece of evidence.

14 Those are the only things I noted off the
15 top of my head.

16 Q. You -- we received from Mr. DuPont a folder
17 of medical bills. Have you reviewed the medical
18 bills in this case?

19 A. I did two years ago. I haven't gone back to
20 them.

21 Q. Do you have an opinion, as you sit here
22 today, of the total amount of medical bills that
23 Mr. Rhyne has incurred?

24 A. Everything looks appropriate to me.

25 Q. Were there anything in the medical bills you

1 reviewed that were unrelated to leukemia treatment?

2 A. It's been too long. I don't remember.

3 Q. Is it fair to say your opinion is -- in the
4 medical bills you reviewed, to the extent that you
5 determined the treatment referenced in the bills
6 which related to leukemia, your opinion is that
7 treatment was appropriate; is that fair?

8 A. Fair.

9 Q. But as you sit here today, you wouldn't be
10 ready to say -- to pull out from those bills or
11 identify things in those bills that are unrelated to
12 leukemia treatment, fair?

13 A. Yes. And if somebody were to ask me to do
14 so, I would be very happy to do so. In general,
15 Counselor, when I am given medical bills to review in
16 this kind of case, there is often things that show up
17 and -- that has to do with the regular care because
18 of the billing system and everything. So I really
19 scan looking for egregious, what's that, kind of
20 things.

21 So I don't really ever -- I don't, in
22 general, sort out like, oh, they should circle this
23 because that's not related to leukemia. I never go
24 through it with that level of detail.

25 Q. Fair enough. If I read out to you the --

(1) well, I guess that Dropbox link will speak for
(2) itself.)

(3) You reviewed medical bills from numerous
(4) providers; is that fair?

(5) A. Two years ago.)

6 Q. Two years ago. There is also a report from
7 a Dr. Hoel, H-o-e-l. Do you recall reviewing that
8 report?

9 A. I don't remember that.

10 Q. That's certainly fine.

11 And then a report from John Spencer. Do you
12 recall reading Mr. Spencer's report?

13 A. I don't believe I did.

14 Q. Some of the records were -- scratch that.)

(15 Is it your understanding you've reviewed all
(16 of the medical records that were collected in this
(17 case from Mr. Rhyne or is it your understanding
(18 Mr. DuPont selected a subset?

(19 A. I'm pretty sure I haven't seen a complete
(20 set of records.)

(21 Q. What is your understanding as to the records
(22 you received from Mr. DuPont in this case?

23 MR. DUPONT: Objection; vague.

24 THE WITNESS: I remember a note from the initial
(25 physician to whom he presented in May of 2015, more

1 or less, documenting the high white count and
2 appearance of blasts in the blood, the decision to
3 transfer him to the specialty hospital, Wake Forest,
4 I believe. Wake Forest, yeah. I remember a variety
5 of discharge summaries for sure that I did review
6 quite a few of them yesterday just briefly. And I
7 know that when I wrote the report and in looking at
8 Dr. Shields -- is that his name?

9 BY MR. GRAY:

10 Q. He is one of the experts, yes.

11 A. About whom we were speaking of?

12 Q. Yes.

13 A. Dr. Shields' report, noting also that the
14 last clinical update I had seen -- and I certainly
15 haven't seen anything since then -- was from his
16 treating doctor's deposition, that he apparently
17 still was in remission in August of 2017. So I know
18 I haven't seen anything since then and I also know
19 there probably wasn't anything that I've seen in the
20 approximate period of time.

21 Q. So from a process standpoint then, you don't
22 request that Mr. DuPont send you every single medical
23 record collected in this case, correct?

24 A. I don't, because that -- from a causation
25 point of view, that's certainly not necessary. I can

1 scan medical bills without having the records knowing
2 the time frame and gauge how appropriate weekly CBCs
3 are, monthly CBCs, that thing of kind. So I don't
4 really need that level of granularity unless a big
5 weird thing showed up there, some crazy proton
6 something. I might ask for that and say, Hey, what's
7 this?

8 Q. And this really isn't directed more towards
9 medical bills. This is just, in general, trying to
10 get to the process by which records are selected for
11 your review.

12 Is it your understanding that Mr. DuPont
13 sends you essentially the diagnosing records and
14 sufficient patient histories to give you some
15 snapshots of the patient over time or is there a more
16 structured process that you can describe?

17 A. Andrew will usually send me -- often he'll
18 give me a thumbnail on the telephone and I'll ask him
19 what does he know about the occupational history,
20 because I don't really want to waste my time if it
21 doesn't seem like -- if either the disease doesn't
22 seem like something I can comment intelligently and
23 meaningfully about or if the occupational history
24 sounds like it's going to be very iffy.

25 Mr. DuPont is a pretty smart guy and pretty

1 good at what he does, so that's almost never
2 happened. There's sometimes one that might be
3 something that's out of his experience.

4 Really more with some other plaintiff's
5 attorneys that I work with where they will ask, What
6 do you think about this disease.

7 Certainly could be caused by benzene, I
8 know, but you're going to have a hard time figuring
9 that one out in a convincing way, unless you know
10 some literature that I don't yet know. I'm not
11 really your guy for that, and you probably don't
12 really want to get involved yourself with that.

13 I might counsel to them that.

14 That said, if it sounds like it's something
15 that I can be helpful with and that I have time to
16 and it sounds like it's reasonable to do, Mr. DuPont
17 will send me kind of what he thinks I need, and then
18 I'll read through it and tell him what I don't feel
19 is adequate, if there is other things he needs to get
20 for me.

21 That's kind of how it works.

22 Q. That makes perfect sense.

23 The deposition transcripts, other than
24 Dr. Howard, that were on the Dropbox link we received
25 from Mr. DuPont were days 1 and 2 of Mr. Rhyne's

1 deposition.

2 A. I read it two years ago. I haven't
3 refreshed my memory on that one. I kind of wanted
4 to, but I didn't have time.

5 Q. And those two volumes, those are the only
6 fact depositions that you've read in this case,
7 correct?

8 A. That's all that I remember.

9 Q. And then there were two documents that
10 involved radiation exposure. One, the file name is
11 NRC, Everyday Radiation Exposure Doses in Our Daily
12 Lives. I have it on my screen here.

13 Do you recall sending something like that to
14 Mr. DuPont or is that something he sent to you?

15 A. I saw that last night. I had a big question
16 mark about that. I wasn't sure what it was doing
17 there. I don't remember anything about it. I saw it
18 last night.

19 As a matter of fact, it was then -- I was
20 having trouble finding my report. For some reason I
21 didn't file it in the place I usually do. And I
22 didn't realize it was two years ago. I was having
23 trouble jogging my memory. I remember doing a
24 radiation case. I don't usually do radiation cases.
25 I would consider it, but I don't.

1 Q. You're not sure how that got in the file?

2 A. As I'm sitting here today. Maybe I knew two
3 years ago. I don't know now.

4 Q. I don't have a hard copy, but at the bottom
5 it's [https://www.nrc.gov/about-nrc/radiation/](https://www.nrc.gov/about-nrc/radiation/around-us/doses-daily-lives.html)
6 [around-us/doses-daily-lives.html](https://www.nrc.gov/about-nrc/radiation/around-us/doses-daily-lives.html), August 10, 2017.

7 And then there is another document also from
8 that same website -- not the exact same ending, same
9 date, but it's Radiation Doses and Regulatory Limits.

10 I'm showing you now on the screen that
11 document that was on the thumb drive. Does that look
12 familiar to you?

13 A. Again, I opened it yesterday.

14 Q. You didn't remember having seen that before
15 yesterday when you opened it?

16 A. Yeah. I can't place it.

17 Q. Okay. Do you have any opinions in this case
18 about radiation exposures?

19 A. You know -- do you mind if I take a peek
20 here?

21 Q. No.

22 A. See, my brain is not what it used to be.

23 Q. You are on page 13 of your report?

24 A. 12 of 13. I read it last night, but that's
25 how much I remember from yesterday.

1 That he did work in a nuclear plant at Duke
2 Energy, of course. And he also wore his radiation
3 badge per his testimony. And that would be expected
4 there. Of course you'd probably be fired if you had
5 a history of not complying with that.

6 In Mr. Petty's report, which I have no
7 reason to dispute, his lifetime estimate was 1.8 REMs
8 occupationally, which is well under the -- 100-fold
9 less than the upper limit of what's allowable in
10 occupational radiation exposure.

11 So it would be my opinion that there is no
12 reason to be concerned that that amount of radiation
13 was contributory to his leukemia.

14 Q. Do you understand that Mr. Petty has been
15 withdrawn as an expert?

16 A. I do understand that.

17 Q. Other than Mr. Petty's calculation, you
18 don't have any other calculation that you rely upon
19 for Mr. Rhyne's potential radiation exposure, do you?

20 A. I haven't gone back to that, no.

21 Q. And in the absence of Mr. Petty's calculation,
22 you wouldn't be able to rule out radiation exposure
23 as a cause of Mr. Rhyne's cancer, could you?

24 MR. DUPONT: Objection; form.

25 THE WITNESS: The nature of the business that he

1 was in there, as a pipe fitter and things like that,
2 is not what I would consider to be a high-risk
3 radiation occupation. It is not like he's working in
4 the reactor or with wastewater or any of that.

5 So, again, I'm not, by any means, any kind
6 of expert in how radiation plants work, nuclear
7 reactors work. But I do know, at least in our
8 country, the radiation exposure is carefully
9 monitored.

10 So for somebody who is in kind of a totally
11 auxiliary job that doesn't involve being in the heart
12 of the radiation, I think it would be very unlikely.

13 BY MR. GRAY:

14 Q. But you can't rule it out?

15 **A. That is absolutely fair, Counsel. You are**
16 **right.**

17 Q. And you would expect, though, a nuclear
18 facility such as the one Mr. Rhyne worked at would
19 probably pay pretty close attention to safety-related
20 rules given --

21 **A. They have to.**

22 MR. DUPONT: Objection; form.

23 BY MR. GRAY:

24 Q. Pretty serious outcomes if there is an
25 incident at a nuclear power plant. You would agree?

1 A. I've seen the HBO mini-series on Chernobyl.

2 Q. You make a statement -- I believe it was on
3 page 13 -- assuming Mr. Petty is correct, that his
4 radiation exposure was no greater than adults of his
5 age who were not occupationally exposed would have?

6 A. Ambient.

7 Q. Ambient. On what data do you rely for that
8 opinion?

9 A. You know, honestly -- I honestly haven't
10 reviewed this in recent days. That's my honest --

11 Q. Okay.

12 A. But, you know, my process would have been
13 that I would have -- I would have compared it to
14 whatever standards, you know, I found in terms of
15 ambient radiation exposure, probably to that.

16 But as I'm sitting here today, I can't quote
17 you chapter and verse.

18 Q. Like other carcinogens, there has never been
19 a safe level of radiation exposure?

20 A. I would agree with that. You know me too
21 well, Counselor.

22 Q. One of the few good questions I've ever
23 asked you.

24 A. I wouldn't say that.

25 Q. Let's talk quickly about Mr. Rhyne's

1 clinical course. So he had a stem cell transplant in
2 2015. And based on the records you've reviewed, he
3 has remained in remission through the date of the
4 last record you've reviewed, right?

5 **A. That's correct.**

6 Q. And even as of Dr. Howard's deposition, I
7 believe in 2017, he was still in remission, right?

8 **A. That's correct.**

9 Q. You may not be aware, but I'll represent to
10 you that in July 2019 Mrs. Rhyne was deposed. And if
11 she said he continued to be in remission, would that
12 be surprising to you?

13 **A. No.**

14 Q. If he is in remission as late as July
15 2019 -- assume that's correct -- what are his odds of
16 recurrence at this point?

17 **A. They are quite low.**

18 Q. More likely than not, he will remain free
19 from leukemia for the rest of his life?

20 **A. If he is four years out -- that would have**
21 **been '15, so that's three and a half years out.**
22 **Usually we think, of people who are five years out**
23 **from alginate stem cell transplant, most myeloid**
24 **leukemias are at extremely low risk of recurrence of**
25 **that leukemia, although they could be at risk of**

1 subsequent leukemias from whatever caused their first
2 leukemia.

3 It would be very unlikely for this leukemia
4 to recur.

5 Q. So you -- I've got just a few questions
6 about different statements in your report that I have
7 never asked you about. On page 4, in paragraph 5,
8 you refer to -- in the second sentence of paragraph
9 5 -- exogenous toxins.

10 A. Yep.

11 Q. Can you educate me a little bit. What do
12 you mean by an exogenous toxin?

13 A. Something from the environment.

14 Q. So you can have mistakes in your cell
15 replication that come from the environment, they are
16 exogenous, or they can be generated physiologically,
17 which means they're not caused by something in the
18 environment?

19 A. Yes. Cells make mistakes. There is also
20 cellular processes in the body that generate things
21 like reactive oxygen species, which are -- which can
22 be DNA-damaging.

23 Q. And instead of exogenous, would those be
24 endogenous?

25 A. Yeah. They'd be endogenously derived.

1 Q. So those endogenously -- would you call that
2 an endogenously derived toxin?

3 Or what's the noun I want to attach to
4 that -- or that I should attach to that?

5 A. Endogenously derived DNA-damaging agent.
6 Reactive species.

7 You know, you're dressed like a Yale
8 professor. You can start giving these lectures.

9 Q. Thought I'd look the part.

10 I'm sorry, the whole phrase was endogenously
11 derived -- what's the last part of that?

12 A. DNA-damaging agent.

13 Q. So these endogenously derived DNA-damaging
14 agents, those can occur in the body separate and
15 apart from any external chemical exposure, for
16 example, right?

17 A. Yes.

18 Q. And those agents -- would you say they are
19 ever present in the human body, at least at some
20 level?

21 MR. DUPONT: Objection; form.

22 THE WITNESS: Normal physiological processes
23 generate things like superoxide, which can cause DNA
24 damage, for sure. That's why people like to take
25 antioxidants for the idea that you can -- it's an

1 unproven idea -- that you can, through nutrition,
2 mitigate some of these factors.

3 BY MR. GRAY:

4 Q. All of the juice bars are pushing those.
5 Now I can tell them.

6 **A. It is not helping your hair color though.**

7 Q. No, it's not. It is going downhill.

8 So on a regular basis we are exposed to
9 these agents. When these processes are going on in
10 our body, are they always causing cellular damage or
11 is it that they have the potential to cause cellular
12 damage?

13 MR. DUPONT: Compound.

14 THE WITNESS: Well, for sure potential. I'd
15 stick with "potential." I think "always" is a tough
16 word. I think "commonly" is appropriate.

17 BY MR. GRAY:

18 Q. So later in your report you say, "Any
19 cellular exposure to benzene can lead to DNA damage."

20 That's not a controversial statement. Would
21 you agree that "any cellular exposure to benzene can
22 lead to DNA damage" doesn't mean that every cellular
23 exposure to benzene does cause DNA damage?

24 **A. You are correct.**

25 Q. And the same would be true of these

1 endogenous DNA-affecting agents as well?

2 A. Absolutely.

3 Q. Have scientists been able to determine the
4 percentage of acute myeloid leukemias that are
5 substantially caused by these endogenous processes?

6 A. I'll say the answer to that is no.

7 Q. But do we know from --

8 A. Defense attorneys would like to query me
9 about so-called de novo leukemia, as if that means
10 something. It means idiopathic leukemia, leukemia
11 for which we don't know the cause.

12 But we do know that all leukemias are caused
13 by DNA damage and genetic mutation, at least in part.
14 So the question really is, and fundamentally in
15 causation is, what are the main factors in this
16 particular person, if you are trying to get that
17 granular, that more likely on a probabilistic basis
18 to have caused the appropriate damage that led to
19 this disease over time.

20 And, you know, I think it is entirely
21 probable that many cases of what we call de novo or
22 idiopathic AML, in part, derive from these endogenous
23 toxins. The literature that points to obesity as
24 being a risk factor all has to do with the fact that
25 obesity sets up a chronic inflammatory state. And

1 it's the inflammatory states that are particularly
2 enriched for DNA-damaging mediators.

3 So that would be the connector between
4 obesity. It is not just because God doesn't like fat
5 people. It's the state of being less than perfect
6 normal weight leads to an inflammatory weight.

7 The same thing, in part, why obese people
8 are more likely to get cardiovascular disease,
9 because of the chronic state in the blood vessels.

10 And Dr. Vogelstein's paper, since we're
11 talking about it, has a lot to do with that because
12 it's a probabilistic calculation of how many cancers
13 are caused by how many mistakes cells make
14 probabilistically in dividing and such.

15 And some of that also has to do with this
16 endogenous cancer generation potential as a human
17 being.

18 Q. So, for example, with benzene, we've got a
19 lot of data in epidemiology studies that help us
20 determine what someone's increased risk of leukemia
21 is based upon --

22 A. Yeah.

23 Q. -- benzene exposure.

24 A. So that would be increased risk over this
25 baseline that everybody has, right? So what

1 everybody has, because of what our body is doing, you
2 know, with genetic variation, with obesity, blah,
3 blah, blah, that's the baseline, right? That we
4 can't get below because we are human beings and
5 defective.

6 And then environmental exposures give you a
7 delta positive risk above and beyond. And that's how
8 you -- epidemiologically that's how you detect a
9 signal, by looking for a statistically significant
10 measurable increment above the baseline. So the
11 baseline incorporates all that stuff presumably.

12 Q. Okay.

13 A. I enjoyed that question.

14 Q. I try to come up with a few every time.

15 A. It's great.

16 Q. This is going to be more boring. Liquid
17 Wrench --

18 A. Liquid Wrench, yeah.

19 Q. -- on page 14 of your report, at the top
20 there you say, "Particularly prior to '79, the
21 formulation of Liquid Wrench was known to be
22 constituted with at least 5 to 14 percent benzene."

23 Have you looked at any data that indicates
24 that Liquid Wrench benzene -- the benzene in Liquid
25 Wrench could have been as low as 3 percent?

1 A. Well, there was a -- Andrew may -- if Andrew
2 is allowed to help me with this -- there is an
3 attachment to a prior case, not that I was involved
4 with. There was testimony from somebody -- from a
5 radiator specialist that talked about this, right?
6 Am I remembering that correctly?

7 So the radiator -- whatever it is --
8 testified to the contamination of benzene. It is an
9 addendum to some deposition of theirs, and that's
10 where I got these numbers from.

11 And we know that they were also measured as
12 high as 50 percent. I haven't done that research
13 recently. That's kind of what I carry around in my
14 file of facts and then --

15 Q. You haven't undertaken to look at --

16 A. Again?

17 Q. -- all of the -- or have you ever at any
18 point said, I want to look at all the documents --

19 A. Every single thing? No.

20 Q. Just so I know the court reporter gets it
21 down. You've never sat down and said, I'm going to
22 look at all the documents and testimony that
23 pertained to the benzene content of Liquid Wrench to
24 reach a professional opinion about that. That's not
25 something that you've done?

1 A. I haven't done that, but I've seen enough
2 data, including direct assessments and testimony,
3 that convinces me that these numbers are conservative.

4 Q. Mr. DuPont has never shown you records
5 indicating that the raffinate portion of Liquid
6 Wrench was as low as 3 percent?

7 That's not a document that's ever been shown
8 to you?

9 A. I can't say that it was or wasn't because I
10 don't remember. I can say, truthfully, that I don't
11 remember.

12 MR. DUPONT: I know it is a little early in the
13 process, but can we take a comfort break at some
14 point?

15 MR. GRAY: Let's do that. We're going to take
16 five.

17 (Whereupon, a break was taken
18 from 10:04 a.m. until 10:09 a.m.)

19 BY MR. GRAY:

20 Q. Another question out of your report on page
21 6, paragraph 10 --

22 A. Yes.

23 Q. Oh, actually paragraph 9. Sorry.

24 A. Okay.

25 Q. At the bottom of the first paragraph in

1 paragraph 9 where it says, "Each new and different
2 type of DNA damage, including the early exposures to
3 benzene and subsequent exposures to other
4 leukemogens, is significant and relevant to the
5 formation of the ultimate clinical disease."

6 Would that also be true if, instead of early
7 exposure to benzene, I inserted endogenously derived
8 DNA-affecting agents?

9 A. Yeah, absolutely. The thing is, that for
10 each of these things there is a dose relationship,
11 and there are different dose relationships, right?

12 So some are strong DNA-damaging gene agents,
13 some are small and some are agents -- some kinds of
14 DNA repair -- I'm trying to be mindful of our court
15 reporter. Some types of DNA repair, the body has
16 evolved to be more -- of DNA damage, the body has
17 evolved to be better at correcting.

18 So for the stuff that goes on every day,
19 endogenously the body is pretty good at fixing a lot
20 of that. But the body -- humans didn't evolve to be
21 in relationship to benzene exposure. That's not
22 something that would have been selected for
23 evolutionarily. So I'll leave it at that.

24 Q. Radiation, for example, humans also weren't
25 evolved to be exposed to radiation?

1 **A. Low-dose radiation.**

2 Q. So the low-dose radiation could also be
3 described as exposures that could be significant and
4 relevant to the formation of the ultimate clinical
5 disease?

6 MR. DUPONT: Form.

7 THE WITNESS: No. You read me backwards. So
8 what I was saying is that humans have evolved to
9 tolerate the usual DNA damage coming from activation
10 of neutrophils and things like that, so a lot of that
11 gets repaired in a pretty efficient way.

12 Humans didn't evolve to deal with benzene-
13 derived cross-linking of DNA.

14 The low-dose radiation due to solar energy
15 and so on, well, some yes and some no. We certainly
16 know there are skin cancers due to solar cancer, and
17 that's not been dealt with, at least in fair-skinned
18 populations.

19 The reason why there are dark-skinned
20 populations in the areas of greatest solar intensity
21 is certainly for that reason.

22 So what you said was kind of backwards.

23 BY MR. GRAY:

24 Q. So is the type of radiation exposure a
25 person would have in a nuclear reactor facility the

1 same type of radiation exposure a person would get
2 from the sun?

3 MR. DUPONT: Form.

4 THE WITNESS: Again, we're talking about very
5 tiny amounts for somebody who's not -- it's gamma
6 radiation. Most of what we get from the sun is
7 ultraviolet. There are -- what do you call them?
8 Cosmic rays, I think, might be gamma. I'm not an
9 expert in how much cosmic rays we get.

10 BY MR. GRAY:

11 Q. And I wasn't really speaking to dose. I was
12 just speaking of the type or the physiologic
13 description --

14 A. It is not exactly the same, no.

15 Q. The radiation from the sun would not be --

16 A. Not the same as radiation from nuclear
17 particles, no.

18 Q. And nuclear particles would be the particles
19 you could potentially have exposure to in a nuclear
20 power plant, right?

21 A. Correct.

22 Q. That's all I wanted to establish.

23 You cite the Health Watch studies a couple
24 times in your report and you cite data for increased
25 risks of AML at different levels of benzene exposure.

1 Based on the subsequent work by Schnatter
2 and others in the combined case control study, would
3 you agree that the AMLs were probably overcounted in
4 Dr. Glass's earlier studies that predated the 2012
5 and that the -- because they should have been counted
6 as NDSs or not?

7 MR. DUPONT: Compound.

8 THE WITNESS: I think it's hard to sort that
9 out. But as I know that you are aware, Counselor, I
10 don't think that it makes sense to sort those out
11 really because they are the same disease. They are
12 just different presentations of the same disease.

13 So it is really artificial to draw lines and
14 then try to put boundaries, statistical boundaries,
15 around them because biologically that doesn't make
16 any sense.

17 So biologically they should be combined in a
18 combined fashion, in my truly expert opinion, because
19 I'm kind of something of an international guru in
20 MDS. Doesn't mean everyone agrees with me.

21 BY MR. GRAY:

22 Q. I understand that opinion. My point is, I
23 guess, if you count a disease in an AML in a pre-2012
24 study and you calculate an odds ratio for benzene
25 exposure in AML, and then if in a subsequent study

1 you recategorized that AML as an MDS and then
2 calculate an odds ratio for MDS exposure, at some
3 level you are double-dipping.

4 A. Except that the second study was combined,
5 so it doesn't go straight to the Australian -- it's
6 not a reanalysis of the Australian Health Watch. And
7 you haven't seen -- you may know of one. I'm happy
8 to respond to it, if you can show it to me -- going
9 back to the Glass study and recategorizing, but they
10 may have not been able to, because I don't know what
11 kind of pathology they had available to them.

12 Q. And we can't tell from the Schnatter paper
13 which comes from where, MDSs come from which of the
14 three studies, right?

15 A. The way I look at the Schnatter paper and
16 the other one that goes along with it is that we know
17 that the Canadian, particularly the British, studies
18 failed to show us an effect. There are a variety of
19 reasons that might be.

20 So now you have this very large combined
21 series and they sliced and diced it. And they have
22 this very significant effect at rather what would
23 have been considered fairly lower -- relatively lower
24 lifetime exposures to benzene in the cases they
25 categorize as MDS.

1 But I don't know that we know where they're
2 coming from.

3 Maybe these are the ones we didn't see in
4 the --

5 Q. But it's not --

6 A. It's not a zero-sum game here because it's
7 an expanded data set.

8 Q. But then Schnatter didn't find excess AML --

9 A. In the expanded data set.

10 Q. -- in the expanded data set?

11 A. That's correct.

12 MR. DUPONT: Form.

13 BY MR. GRAY:

14 Q. Didn't find statistically significant excess
15 AML because --

16 MR. DUPONT: Form.

17 THE WITNESS: Correct.

18 BY MR. GRAY:

19 Q. What would really be helpful would be a
20 paper that combined the AMLs and the MDSs in
21 Schnatter and then ran odds ratios from there on a
22 combined basis, based on your view of the --

23 A. I think that that would be the best way to
24 look at this, absolutely.

25 Q. Let's talk about familial AML. Mr. Rhyne's

1 sister had AML. I think you reference that on page
2 11 of your report?

3 A. Yep.

4 Q. Having a sibling with AML is certainly a
5 risk factor for AML?

6 A. It is.

7 Q. Are there published data -- without doing
8 any underlying genetic testing, just knowing you have
9 a sibling with AML, is there published data that
10 would tell us what someone like Mr. Rhyne's odds
11 ratio for an AML diagnosis is?

12 A. I may have included that here. Maybe not.

13 Yeah. So I don't -- I don't carry those
14 data -- I can't carry those data around. The most
15 recent analysis -- I think the most -- the least
16 biased analysis probably that's emerging is from
17 Dr. Godley, whose work I do reference in here. And I
18 recently heard her talk. And I guess I can't come up
19 with that number for you.

20 Q. Okay.

21 A. But there is some increased risk from having
22 a sibling, for sure.

23 Q. Is Dr. Godley's data the data that you
24 reproduced in the tables on page 12?

25 A. Those are from one of her papers, but they

1 don't address the specific question you asked me.

2 Q. That's where you would recommend I go to
3 find that data?

4 A. I would go to one of her recent datas.
5 She's really done a remarkable job collecting --
6 well, she collects families where there is more than
7 one leukemia or more than one cancer.

8 It turns out that it's a leukemia in people
9 who have first -- they're degree relatives with
10 cancer. And she is coming up with estimates of, you
11 know, given X number of first-degree relatives with
12 cancer, what are the chances that if you study it
13 you're going to find a familial gene?

14 That's kind of the process. And there is a
15 bunch we never do. And she never gets much above 25
16 percent, as I recall. So in her most highest-risk
17 families, I think -- and I'm really -- I don't want
18 this put on the record as the facts that I know.

19 Q. You are telling me you are -- go to the
20 paper?

21 A. I am telling you what I remember the paper
22 saying. It's vague. It's generalized.

23 Q. Yeah.

24 A. That in the cases that she would consider
25 the most fruitful in whom to investigate the

1 possibility that it's part of a familial cancer
2 syndrome, the best you can get is 25 percent yield
3 with the genes we know about right now.

4 Q. And is that a --

5 A. The highest-risk families, I guess, they
6 find them at 25 percent.

7 Q. Not a 25 percent increased risk, but
8 actually a 25 percent estimate risk?

9 MR. DUPONT: Objection.

10 THE WITNESS: No. The risk of finding such a
11 gene in families like that is 25 percent, at best.
12 And those families are much more positive than this
13 one would be.

14 So that would be the highest risk of finding
15 a familial gene if you were to look for it.

16 BY MR. GRAY:

17 Q. Okay.

18 A. So with one sibling, it's, I'm sure, less
19 than 25 percent. Right from where we are sitting, I
20 haven't -- I just haven't thought to look at that.
21 Sorry.

22 Q. Even if you can't find the familial gene --
23 well, the familial genes that have been identified
24 may not be all of --

25 A. Absolutely.

1 Q. Just for the court reporter's record, may
2 not be all of the genes that are actually involved in
3 familial AML. You agree with that?

4 A. Yeah.

5 Q. Have you ever counseled any of your patients
6 to conduct testing to determine whether or not they
7 have those genes?

8 A. Yes.

9 Q. Is it in circumstances where they had family
10 members with the gene -- or with the disease?

11 A. No. Well --

12 Q. Let me ask a better question. Under what
13 circumstances, as a treating clinician, would you
14 recommend testing for these genes?

15 A. So we screen every AML and MDS for about 50
16 commonly mutated genes because that's important
17 prognostically and it's helpful diagnostically. And
18 even sometimes direct therapies specifically based on
19 those findings nowadays.

20 Now, when we find mutations, we determine
21 what's called an allelic ratio, which tells us how
22 many -- like what percent of the DNA of that gene is
23 mutated.

24 You with me?

25 Q. Yes.

1 A. So if your allelic ratio is 50 percent, that
2 means half of the genes of that nature are mutated.

3 So most likely one copy, either mom's copy
4 or dad's copy, is mutated and the other one is not.
5 It doesn't tell you if it's acquired or not.

6 If it's 100 percent, that means both copies
7 are abnormal.

8 And that would be very unusual. And when
9 that happens, we worry about a germline mutation,
10 which would be a familial thing. And the first thing
11 we would do there is to get germline DNA, which we
12 can do in a number of ways. And from a paper that
13 I've recently been involved with in MDS through the
14 National Heart, Lung and Blood Institute's MDS
15 Natural History Study, we examined various sources of
16 germline DNA for these patients.

17 You understand that blood goes through all
18 the tissues, so anything you look at is going to be
19 contaminated with blood. And the standard is you
20 take a skin biopsy and let the skin cells grow over a
21 month. But that's slow.

22 It turns out that the T lymphocytes, which
23 you can get out of the blood, turn out to be a great
24 source of material. You can get it pretty cleanly,
25 isolate pretty cleanly.

1 And so we recently did that. We had a -- it
2 was patient in whom we felt there was likely to be a
3 germline mutation in whichever gene it was. I think
4 it was C/EBP-alpha.

5 And we had the genetics people isolate the
6 T cells and they ran the T cells. And, in fact,
7 there is a germline mutation there. And then she
8 acquired the second mutation which caused her
9 leukemia. That's a germline mutation.

10 Now they're going back and testing the
11 parents and the other sibs to see who's at risk. So
12 that's one scenario.

13 Q. Okay.

14 A. There is another scenario in a paper that
15 I'm currently -- that was just submitted where I am a
16 co-author from Dr. Godley's group. We had a
17 family -- I don't remember if it was from my time at
18 Hopkins or from here -- that was -- it was like crazy,
19 had to be a familial cancer because it was very
20 unusual kind of leukemia and a bunch of people in the
21 family had that very rare kind of leukemia.

22 It was nothing like anybody had ever seen
23 before. And they worked up the family. I referred
24 them to her and they worked up the family. I don't
25 remember what gene they found.

1 So that's a different story. That's kind of
2 more like what you were saying. Like if you have a
3 history like that, you do it.

4 But the more frequent thing would be, when
5 we do our routine -- our routine screening and we
6 find out that the allelic ratio for any given
7 mutation is 100 percent, that suggests there may be a
8 germline.

9 Q. The routine screening that you've described
10 in your practice, was that screening performed on
11 Mr. Rhyne from your review of the records?

12 A. No. Because of the emergent nature of his
13 presentation, it is said in the records, or in the
14 depositions -- and whether there is a dot, dot, dot --
15 we kind of dropped the ball.

16 It wasn't the first thing they were thinking
17 about, I think, is the thing. They just wanted to
18 stabilize the patient, who was critically ill, and
19 they didn't send it.

20 Q. And once you've started treatment, it's
21 really too late to --

22 A. No, that's not true.

23 Q. Okay. You still could?

24 A. You still could. But once somebody is in
25 remission, then it's hit or miss.

1 Q. This is not a standard of care question, but
2 just in your own practice, you would have done
3 additional testing on Mr. Rhyne?

4 Or if he was your patient, he would have
5 received additional testing that would have shed more
6 light on this issue, fair?

7 MR. DUPONT: Objection; form, vague.

8 THE WITNESS: It's fair, but I'm sure there have
9 been situations where we have been remiss as well.
10 And what usually happens in those cases, this kind of
11 patient is in the intensive care unit. The primary
12 team taking care of the patients are intensivists.

13 More importantly, the nursing team is an
14 intensive care team that doesn't know a lot about
15 leukemia. Now, the leukemia team works carefully
16 with them to spell out everything. You put all your
17 records in Epic. It's the electronic medical record.

18 And the way our Epic system here is
19 configured at Yale, it would be pretty easy for
20 things to be ordered and not sent if somebody doesn't
21 know what it is. That would be an easy human error
22 when you are trying to do a lot of things in the
23 critically ill patient.

24 So that has happened to us in just this
25 scenario where somebody is super sick and you ordered

1 everything right and you call a week later for the
2 results and it was never sent.

3 It's really unfortunate when that happens.
4 But it happens, I'm sure, everywhere.

5 BY MR. GRAY:

6 Q. So Mr. Herrick's report, he calculates
7 exposure to Liquid Wrench during the use of Liquid
8 Wrench as a coolant and a lubricant on hot metal
9 surfaces. Do you recall seeing testimony or
10 statements in reports to that effect?

11 A. Yes.

12 Q. You understand that Liquid Wrench is a
13 flammable material?

14 MR. DUPONT: Objection; form, beyond the scope.

15 THE WITNESS: Yes, it is.

16 BY MR. GRAY:

17 Q. Would you expect a -- is it a good work
18 practice to use a flammable material on a hot metal
19 surface on a regular basis?

20 MR. DUPONT: Form, beyond the scope.

21 THE WITNESS: I'm not an expert in fire prevention.
22 I'm not.

23 BY MR. GRAY:

24 Q. Just from your common sense, in a nuclear
25 power plant, knowing everything you know about the

1 hazards of an incident in a nuclear power plant, you
2 would agree it is not a good idea to use a flammable
3 material on a hot metal surface on a regular basis?

4 Would you agree with that?

5 MR. DUPONT: Conversations about fair questions
6 and misleading questions like you wanted to have on
7 Friday of last week and Mr. Rhyne wasn't in the
8 nuclear power plant portion of the building when
9 using the Liquid Wrench on the lathes.

10 MR. GRAY: You can -- all those objections are --

11 THE WITNESS: All I would say --

12 MR. DUPONT: I'll object to form and scope.

13 THE WITNESS: All I can say is, I would hope
14 that in a place like Duke Energy, it was a highly
15 regulated environment. I assume that their
16 contractors have highly regulated SOPs. And I'm
17 assuming that the SOPs, for whatever they use, are
18 followed.

19 And I would expect that good workplace
20 practice includes following your SOPs. And if they
21 don't have such SOPs, then that's probably Duke
22 Energy. But given that they're regulated by the U.S.
23 Nuclear Commission, whatever it's called nowadays,
24 I'm guessing they're probably now just like what they
25 were like 30 years ago. I don't know.

1 BY MR. GRAY:

2 Q. For anyone working with a product that is
3 listed as flammable, just as a layperson's common
4 knowledge, setting aside the nuclear facility aspect,
5 you would agree it's generally not a good idea to
6 pour a flammable material on a hot metal surface?

7 MR. DUPONT: Objection; form, beyond the scope.

8 THE WITNESS: I would say it probably has to do
9 with what the ignition temperature is or how hot the
10 thing is, because it's not one-size-fits-all in that
11 regard.

12 BY MR. GRAY:

13 Q. And that's not information you have?

14 A. About what he did? I haven't reread his --
15 I haven't reread his testimony in two years. I'm
16 sorry.

17 Q. Did you recall seeing any discussion or
18 explanation of that issue in Mr. Herrick's report
19 where he sort of worked the corners of that issue and
20 he talked about, even though it's flammable, here is
21 why it's okay?

22 Did he address the possibility at all of --

23 A. I didn't read Mr. Herrick's report in great
24 detail. I mainly focused on his estimates and how
25 they differed from Mr. Petty's.

1 Q. And at this point you are relying on
2 Mr. Herrick's --

3 A. Yes.

4 Q. -- estimates as well?

5 A. Yes.

6 Q. Mr. Herrick did not calculate any exposure
7 to benzene after 1998. Does that -- that's what I
8 picked up from page 14 of his report.

9 A. I would have to take a look at it.

10 Q. It's a long report, so rather than asking
11 you to go through the whole thing, I'm just going to
12 point out one example of his -- his exposure discussion
13 stopped in 1998 on page 14 there. I've circled it.

14 Do you see that?

15 A. That's referring to that sentence. It
16 doesn't tell me what he is doing for the rest of the
17 thing.

18 Q. I'm trying to get around having you --

19 A. I gotcha.

20 Q. Assume that I'm correct and that Mr. Herrick
21 didn't calculate any exposure after 1998.

22 A. Are we talking about Liquid Wrench still?

23 Q. To any benzene-containing product.

24 A. Okay.

25 Q. That would be 17 years between '98 and the

1 diagnosis in 2015, right? 16 years.

2 **A. Yes.**

3 Q. That's all I have for that.

4 You can describe some of Mr. Rhyne's work as
5 the type of work a mechanic would do?

6 **A. Plumber it seems more like. Pipe fitting is**
7 **a plumber's job.**

8 Q. We've talked about this before. There are a
9 number of epidemiological studies of mechanics that
10 have data on the extent to which they are at
11 increased risk of leukemia and other cancers, right?

12 **A. I know that we've talked about that, yeah.**

13 Q. You have never undertaken to generate an
14 opinion about whether or not people doing mechanic
15 work are at increased risk of AML as a group, have
16 you?

17 **A. Well, I think that there is such a variety**
18 **of what mechanics do that that would be kind of a**
19 **useless endeavor.**

20 Q. Well -- but there have been over a dozen
21 studies published about that. You think those
22 authors were wasting their time?

23 **A. I would have to look at any particular one**
24 **that you point me to. I think you have to define**
25 **your population that's potentially at risk carefully**

1 and specifically potentially product-based.

2 So a mechanic who just does dry wrenches and
3 whatever else in soldering and other things mechanics
4 do and uses different kinds of solvents for cleaning
5 is going to be substantially different than somebody
6 who is using Liquid Wrench, back in the day especially,
7 and the mineral spirits even currently and such. I
8 think that matters.

9 Q. Okay.

10 A. Excuse me. Can we take a break so I can
11 feed my meter? It will be two seconds.

12 (Whereupon, a break was taken
13 from 10:35 a.m. until 10:37 a.m.)

14 BY MR. GRAY:

15 Q. I'm going to hand you -- I'm not going to
16 mark it, but it's Dr. Shields' report. And on page
17 51 he has a discussion of his review of the
18 literature on mechanics and AML risk.

19 A. Go ahead.

20 Q. He makes a statement at the very top of his
21 discussion of mechanics and AML risk where he refers
22 to studies that have looked at mechanics and risk of
23 cancer, including leukemia, and he cites footnotes, I
24 think, 447 through 462.

25 A. Uh-huh.

1 Q. Suggesting that's about 15 studies. I
2 understand why you wouldn't have done it based on
3 your prior testimony. But you've never undertaken a
4 comprehensive review of, I'm going to go out and find
5 all the mechanic studies and I'm going to read them
6 and reach a conclusion about whether or not as a
7 worker group there is an increased risk of --

8 A. Well, his next sentence that you don't have
9 underlined says, "These studies date back to a time
10 when mechanics would have worked with products that
11 had benzene contents of solvents that could be much
12 higher."

13 But in so stating, the implication is that
14 he doesn't know that they did because it wasn't
15 enumerated in those studies. So everything that I've
16 said about the reasons that those would not be
17 considered to be valid comparers obtains here.

18 Q. So I think that answers my question. That's
19 not something you've done, and you've just explained
20 why you haven't done it, fair?

21 A. Yeah, fair.

22 Q. It's your opinion that compounds that have
23 low levels of benzene in the 1, 2, 3, 5 percent --

24 A. Products. Products that have low --

25 Q. Products. Yes, products. I'm just going to

1 use a broad range. Between 1 and 5 percent benzene
2 can cause AML?

3 **A. Yes.**

4 MR. DUPONT: Form.

5 BY MR. GRAY:

6 Q. Are you familiar with statements by IARC
7 about whether or not gasoline has been determined to
8 be a carcinogen? You are, right?

9 **A. Yes.**

10 Q. As of IARC volume 45, IARC said there was
11 inadequate evidence that gasoline is a carcinogen,
12 right?

13 **A. Right. But that's a separate question about**
14 **whether gasoline is a carcinogen.**

15 Q. Well, IARC found there was inadequate
16 evidence that gasoline was a carcinogen, right?

17 **A. That's correct.**

18 Q. And ACGIH has made similar statements in its
19 publications?

20 **A. You'll have to give me the -- explain your**
21 **acronym.**

22 Q. The American Conference of Governmental
23 Industrial Hygienists. Is that --

24 **A. I don't know.**

25 MR. GRAY: Dr. Gore, those are all the questions

1 I have.

2 THE WITNESS: Thank you.

3 MR. GRAY: Are you ready or do you want to take
4 a break?

5 MR. SCHULTZ: We can go off the record.

6 (Whereupon, a break was taken
7 from 10:41 a.m. until 10:42 a.m.)

8 EXAMINATION

9 BY MR. SCHULTZ:

10 Q. Doctor, we are back on the record. My name
11 is Vaughn Schultz. I just want to continue with some
12 questions. I want to touch on a couple of topics
13 that Mr. Gray asked you about.

14 A. Okay.

15 Q. You implied earlier when Mr. Gray was
16 questioning you that the body has evolved to repair
17 endogenous damage better than exogenous damage; is
18 that fair?

19 A. Yeah.

20 Q. Okay. What's your basis for that statement?

21 A. Because we survive, on average, 75 years, or
22 70 years. And if we didn't have such protection, we
23 would all have cancer at very young ages, because
24 cancer is a disease of aging. So it goes, therefore,
25 without question that -- since we know that these

1 events happen a gazillion times a day, reactive
2 oxygen species and superoxide and free radicals. It
3 is well known, we know the body has antioxidants.
4 These are carefully studied. There is glutathione.
5 There's many others.

6 Q. But you're just basing that on an assumption
7 because people live longer?

8 A. I am basing it on evolutionary biology.

9 Q. You are not an evolutionary biologist,
10 right?

11 A. No, but I am a biologist.

12 Q. You are not an expert in evolution?

13 A. No, I am not.

14 Q. Do you have any idea how the body's repair
15 system differentiates from endogenous toxin damage
16 versus exogenous toxin damage?

17 A. Well, you know, the area of DNA repair is
18 very complicated. There are several pathways
19 involved which have numerous multiprotein complexes.
20 There is the non-homologous end joining, which would
21 be abbreviated NHEJ, and the more conventional DNA
22 repair machinery.

23 And you are asking me if I remember why one
24 kind of repair would be easier than the other or why
25 repair -- some of it has to do with -- with

1 complexity of damage and amount of damage.

2 Q. I'm asking you, do you know how the body
3 differentiates that damage?

4 A. Well, there is different -- absolutely. So
5 there is different types of DNA damage induced by
6 these various agents. Some are single-stranded
7 breaks, some are double-stranded breaks. There is
8 cross-linking, and some the body is not good at and
9 some the body is good at.

10 That's absolutely known. Again, I can't
11 recite chapter and verse, but I think the fact that
12 we survive is prima facie evidence that we deal with
13 most of the DNA damage that's done through
14 physiological processes pretty well, because we know
15 if we measured it at any given time, it's going on
16 all the time.

17 Q. You agree, correlation does not mean
18 causation, correct?

19 A. I would agree with that.

20 Q. Would you also agree that benzene has
21 existed on earth longer than humans have?

22 A. Yes.

23 Q. So your statement that humans have evolved
24 to deal with radiation but have not dealt with
25 benzene is based on what?

1 A. You weren't asking me about radiation. You
2 were talking about endogenous DNA-damaging agents, is
3 what you asked me about.

4 Q. I apologize. I'm going back to what you
5 told Mr. Gray this morning that --

6 A. Well, we talked about several things.

7 Q. Right. You had mentioned -- tell me if I'm
8 wrong -- that the body has evolved to handle
9 radiation exposure better than benzene; is that fair?

10 A. I don't really think we had that discussion,
11 no. We had a discussion about the body had evolved
12 to deal with endogenous DNA-damaging molecules like
13 free radicals and superoxide, ozone to some extent.

14 Q. Well, if you didn't testify, that's fine. I
15 wrote down that you said that humans can tolerate
16 radiation better than benzene. Is that not your
17 testimony?

18 A. I did not testify to that.

19 Q. So you don't have an opinion that humans can
20 tolerate radiation better than benzene?

21 A. There is a different dose response to
22 radiation. And we know that radiation causes
23 leukemia in the appropriate setting. And certainly
24 radiation and chemical toxins, particularly in the
25 form of chemotherapy, can synergize to cause leukemia.

1 We know that.

2 Q. So you do not have an opinion that the body
3 can tolerate radiation better than benzene?

4 A. I mean, I don't mean this in an insulting
5 way, but it's kind of -- I won't say it's a stupid
6 question, but it's not really -- it's not a
7 reasonable thing that you are asking me to compare.

8 Q. Okay.

9 A. Because we give radiation at super high
10 doses for treatment, and we know there is limits --
11 there is tissue limits for different tissues. The
12 spinal cord is very sensitive. The gastrointestinal
13 system is very sensitive.

14 Other tissues are much less sensitive. So
15 you can give a lot of radiation to the prostate to
16 cure prostate cancer that you couldn't give to the
17 bone marrow. That's very well characterized.

18 And the kind of radiation that Mr. Gray and
19 I were talking about had to do with solar radiation
20 and ambient cosmic radiation. It's a wholly
21 different magnitude.

22 So I can't tell you if I had -- I just don't
23 think they can be compared, let's just put it that
24 way. I'll make it simple.

25 Q. There is ambient benzene exposure to humans,

1 correct?

2 **A. There is.**

3 Q. And some of that is naturally occurring
4 benzene?

5 MR. DUPONT: Form.

6 THE WITNESS: I don't know about that actually.
7 Most of the benzene in our environment is an
8 industrial pollutant.

9 BY MR. SCHULTZ:

10 Q. There is certainly benzene in food and air
11 and water?

12 **A. Trace amounts.**

13 Q. Do you have an opinion as to whether that
14 benzene is not tolerated by the body compared to
15 radiation from solar?

16 **A. You know, I just -- I'm not trying to be**
17 **difficult, Counselor. I don't know how to respond to**
18 **you.**

19 I think that everything that the body
20 ingests and everything that's in the environment
21 contributes to the baseline incidence of myeloid
22 malignancies in the population that's not
23 occupationally otherwise exposed or industrially
24 exposed or chemotherapeutically exposed or exposed to
25 cigarettes.

1 I think there is some baseline that the
2 average person leading a relatively healthy life has
3 a certain incidence of leukemia and it doesn't come
4 out of the blue. Has to do with mistakes their body
5 made, has to do with stuff in their environment.

6 But, sure, it could include some benzene in
7 the food. I have no reason to think -- to doubt
8 that. It could have to do with some radiation in the
9 environment. All of that is possible.

10 And that gets summed in some baseline rate.
11 Now we're talking about occupational exposures to X,
12 Y or Z that increase that rate from B to E, whatever
13 that might be.

14 Q. In your report --

15 A. And the same is true of radiation.

16 Q. In your report, first -- there is several
17 paragraphs that have no citation and it is just a lot
18 of prose that you have written out. Paragraphs 4, 5,
19 6, 7, 8, 9, 10 have no citations whatsoever.

20 A. 4, 5 is my history and training and my CV.

21 Q. Oh, you must have more than 4.

22 A. Are you in section 2?

23 Q. I'm on page 4 -- paragraphs 4 through 10 on
24 page 6, there is no citations for any of those
25 paragraphs.

1 A. That's correct.

2 Q. Where is that information derived from?

3 A. This is basic biology. This is well-agreed-
4 upon biology, so I'm really summarizing a vast
5 quantity of the stuff that I've learned over the last
6 30 years and I don't feel the need to annotate them
7 because I don't think any of it is really
8 controversial.

9 Q. What about the statement that "A leukemic
10 stem cell may be" --

11 A. Quiescent.

12 Q. -- "quiescent for an extensive period" in
13 paragraph 8?

14 A. Because we --

15 Q. What's the citation or the basis for that?

16 A. Well, we know that leukemia -- the stem
17 cells are quiescent. And we know the leukemia stem
18 cells become quiescent. There is plenty of data
19 about that.

20 Q. Can you cite that?

21 A. As we are sitting here? Nobody has asked me
22 to, but I'm happy to supply you with information
23 about that, absolutely. There is published data
24 about leukemia stem cells which are mostly in a
25 quiescent state. We know that.

1 Again, that's stem cell biology. There is a
2 gazillion articles about that.

3 Q. But you haven't cited any, right?

4 A. As you stated, I didn't, because it's like
5 telling you that your hair is red.

6 Do I have a set citation for that? It's
7 true. We know that.

8 Q. Well, my hair is not red.

9 A. Well, I would call it red.

10 MR. DUPONT: That's not the point.

11 BY MR. SCHULTZ:

12 Q. The statement "may be quiescent," what is
13 the certainty that a leukemic stem cell would be
14 quiescent?

15 A. Most stem cells are quiescent. The vast
16 majority of stem cells are quiescent, malignant and
17 otherwise. That's stem cell biology.

18 Q. What percentage?

19 A. 99 percent, or something like that, at any
20 given time. That's the nature of stem cells.

21 Q. Do you agree that benzene only causes
22 damages to dividing stem cells?

23 A. No, that's not true. That's not necessarily
24 true.

25 Q. Not necessarily true?

1 A. That's not true.

2 Q. Are you familiar with the work of Martin
3 Smith?

4 A. You'll have to tell me what you are talking
5 about in particular.

6 Q. You are aware of who Martin Smith is?

7 A. I am.

8 Q. Have you read any of his papers?

9 A. I have.

10 Q. Are you familiar with any of his papers that
11 suggests that benzene only damages dividing stem
12 cells?

13 A. Not as we sit here, no.

14 Q. With regard to obesity, you noted at least
15 some data that has suggested a risk factor of 1.5 --

16 A. Correct.

17 Q. -- for causation of AML?

18 A. Yeah.

19 Q. Assuming Mr. Rhyne had no occupational
20 exposures to any solvents or chemicals, would that
21 have been significant to you, the 1.5 risk ratio?

22 A. Yeah, I think it is. Even with him having
23 that, I think that that's a factor in his risk for
24 leukemia, absolutely. His BMI was about 31 and that
25 puts him in a category that has about a 1.5-fold risk

1 of leukemia over the thinner populations.

2 Q. If you could turn to -- I guess it's
3 paragraph 1 of your methodology section. The first
4 sentence there, it suggests that you were evaluating
5 an individual's exposure to one or more chemicals.

6 Is what that your methodology was in this
7 case?

8 MR. DUPONT: Vague.

9 THE WITNESS: I was asked to respond to whether
10 this patient's occupational exposure to benzene may
11 have been causative in his leukemia. So by
12 definition, that is what I was asked to do.

13 That's not a method. That is a happenstance
14 when evaluating, when tasked with this. But what you
15 read to me is not a method. The method is what you
16 do in order to respond to the task.

17 BY MR. SCHULTZ:

18 Q. My question is, were there more than one
19 chemical that you evaluated or was benzene the only
20 one?

21 MR. DUPONT: Vague.

22 THE WITNESS: We know that raffinate and Liquid
23 Wrench have other chemicals that we don't associate
24 with the same kind of leukemic risk, things like
25 toluene and other hydrocarbons. We did talk about

1 the radiation issue, which I did address. We can
2 consider radiation a chemical in that way.

3 BY MR. SCHULTZ:

4 Q. Did you look at any literature or evaluate
5 mineral spirits as a chemical in this case?

6 A. I have, sure.

7 Q. And how did you evaluate -- or where are
8 your opinions about mineral spirits in your report?

9 A. Mineral spirits would be another source of
10 benzene through its benzene contamination, which we
11 know to be often substantial, and I would rely then
12 on the industrial hygienist expert, in this case
13 Mr. Herrick, to quantify the likely exposure to
14 benzene through mineral spirits in his or her report.

15 I would rely on that because I am really not
16 trained to do that.

17 Q. So you did not evaluate any of the
18 epidemiological or medical literature regarding
19 mineral spirits exposure?

20 A. No, I have. In general, I didn't have to,
21 no, because I come with a body of information about
22 this and I am well aware that mineral spirits is
23 contaminated with significant amounts of benzene.

24 So that's a question of, not does mineral
25 spirits cause cancer, but does the benzene in mineral

1 spirits cause cancer.

2 Benzene doesn't care if it's next to methane
3 or -- benzene is benzene. The body doesn't care. It
4 is the same molecule, no matter how you get it.

5 So the question that you're asking is an
6 obfuscating one. It is a question of how much
7 benzene does he get through his use of mineral
8 spirits, not does mineral spirits cause cancer.

9 That's not really a question here. It's
10 whether benzene causes cancer, which we know it does.

11 Is benzene in mineral spirits? Yes.

12 How much benzene does he get from mineral
13 spirits? And then determining whether that --
14 whether that is seen as a significant thing.

15 But you can't parse out one source of
16 benzene from another in the body, so you have to sort
17 of add up a lump sum because you can't isolate the
18 benzene that came from mineral spirits versus the
19 benzene that came from raffinate versus the benzene
20 that came from whatever other thing he was doing.

21 The body doesn't know where it came from.
22 We don't know which molecule benzene did what.
23 Everything has to be considered to be contributory.

24 Q. You said a lot there. I'm just trying to
25 unpack some of it.

1 Did you just say mineral spirits is benzene?

2 A. I did not say that. Maybe you should have
3 her read back about that if you want.

4 Mineral spirits is known to be contaminated
5 with benzene, I believe is what I said. I'm sure
6 that's true.

7 Q. We can move on. Is it fair that you have
8 not evaluated any literature specific to exposure to
9 mineral spirits?

10 A. You asked and I answered that, Counselor. I
11 said that I have.

12 I did not in this particular incident
13 because I have reviewed those data.

14 Q. Do mineral spirit -- strike that.

15 Does mineral spirits -- strike that.

16 Does exposure to mineral spirits cause
17 cancer?

18 A. I would say that in the right amounts,
19 exposure to mineral spirits does cause cancer,
20 because mineral spirits is a complex amalgam of a
21 variety of compounds, some of which we know to cause
22 cancer. So yes.

23 Q. Other than you, Dr. Gore, who has issued the
24 opinion, from any international agency or governmental
25 agency, that mineral spirits exposure causes cancer?

1 A. Again, you are turning my answer around,
2 Counselor, which I object to a little bit because I
3 said the benzene in mineral spirits causes cancer.
4 That's a different question.

5 Q. That's fine. You can answer that question.

6 My question is different, which I believe
7 you answered prior. Does exposure to mineral spirits
8 cause cancer?

9 A. I said it does in the right circumstances
10 because it contains benzene.

11 Q. Is that a dose-dependent question for you?

12 A. Absolutely.

13 Q. What is the dose of exposure to mineral
14 spirits that causes cancer?

15 A. It would be based on the fraction of mineral
16 spirits that has benzene, and I would base it on the
17 benzene literature. So if you have 1 percent benzene
18 in mineral spirits, you would have to figure out the
19 parts per million-years of benzene based on their
20 occupational exposure, and I would derive it not from
21 mineral spirits data, but from benzene data I would
22 extrapolate.

23 And that is my methodology.

24 So if you get to above 3 parts per million-
25 years -- let's just say, just to be Schnatteresque

1 about it, if you get 3 parts per million-years of
2 benzene from slapping mineral spirits all over your
3 body every day, you would be at risk for leukemia.

4 And if you came to me and said, I'm a
5 hobbyist and I smear mineral spirits all over me
6 every day and this is what it is and it's every day
7 and it's this much, and some hygienist says, Well,
8 that gets to 3 parts per million-years, you bet that
9 that was contributory to your leukemia.

10 Q. Where have you seen published data that
11 exposure to mineral spirits causes leukemia?

12 MR. DUPONT: Objection; form.

13 THE WITNESS: I don't have a response to that
14 right now.

15 BY MR. SCHULTZ:

16 Q. Have you ever seen it?

17 MR. DUPONT: Objection; form.

18 THE WITNESS: I haven't re-upped my reading
19 specifically looking at mineral spirits, per se, for
20 this testimony and so I'm not going to respond to
21 that.

22 BY MR. SCHULTZ:

23 Q. You are familiar with IARC, correct?

24 A. I am familiar with IARC.

25 Q. You do not cite IARC anywhere in your

1 report; is that fair?

2 A. Right. Because I think IARC is of limited
3 utility in these cases. I know defense attorneys
4 love IARC, but it's all obfuscation. It's all saying --
5 trying to say that my product, which was looked at in
6 a certain way, is considered to be safe under certain
7 circumstances.

8 But that's not the circumstances we're
9 talking about here. Now we're talking about multiple
10 chronic exposures to multiple benzene-indicating
11 compounds, and that's what's causing leukemia.

12 So the thing specifically about whether
13 mineral spirits, per se, causes leukemia is an
14 irrelevant question, in my opinion, causation-wise.

15 Q. Do you agree with IARC's findings with
16 regard to benzene?

17 MR. DUPONT: Form, compound.

18 THE WITNESS: I agree that IARC sets standards
19 of reasonable risk for the country and other agencies
20 to employ which will accept a certain amount of
21 cancer causation by the various things it studies.
22 The society as a whole accepts a certain amount of
23 risk.

24 That's what these agencies do; they say
25 what's an unacceptable risk, what's an acceptable

1 risk, where do we get it. And none of it is
2 absolutely safe.

3 Absolutely IARC says that there are no safe
4 levels of benzene, and then they set standards. And
5 given that we have to use it, what are we going to
6 accept?

7 So I think you are using IARC and other
8 regulatory agencies for the wrong purpose, Counselor.
9 They don't absolve any of these compounds from being
10 carcinogenic.

11 BY MR. SCHULTZ:

12 Q. Did you just say IARC says that there is no
13 safe level of exposure to benzene? I'm just asking --

14 A. I did say that.

15 Q. Did you mean to say that?

16 A. You know, some of the regulatory documents,
17 whether it is IARC or another one, absolutely say
18 that there is no safe level of benzene.

19 Whether it is IARC exactly, I can't tell you
20 exactly.

21 Q. Do you agree that IARC has determined that
22 benzene -- can you mute your phone, please?

23 A. Whoever is typing needs to be on mute.

24 Q. Do you agree that IARC has determined
25 benzene to be a carcinogen because of its propensity

1 to cause acute myelogenous leukemia?

2 A. Yes.

3 Q. Do you disagree with that finding?

4 A. Do I disagree with that finding?

5 Q. That's not a trick question.

6 A. I feel like it was a trick question. I
7 don't have the IARC monograph in front of me and I
8 didn't review it for this testimony.

9 I am familiar with it. I can't recite it
10 chapter and verse.

11 I feel like you are asking me to be boxed
12 into something that could be factually incorrect.
13 You are potentially trying to corner me into
14 something that IARC did or didn't say.

15 I think what I would ask, or request, is
16 that if you want me to respond to a certain thing in
17 the IARC monograph, please pull it up and I'm very
18 happy to tell you whether I agree with that or not,
19 because I don't have it memorized.

20 Q. Sure. It wasn't a trick question.

21 A. Well, why should I trust you?

22 Q. I'm just asking --

23 A. I'm under oath, you're not.

24 Q. -- do you agree that IARC has determined
25 benzene to be a carcinogen?

1 A. Yes.

2 Q. Do you agree that IARC has not determined
3 mineral spirits to be a carcinogen?

4 A. I don't remember off the top of my head.

5 Q. Have you ever reviewed IARC's monograph on
6 mineral spirits?

7 A. I have. Have I done it recently? No.

8 Q. Did you do it for this case?

9 A. No. I already told you I didn't review
10 mineral spirits literature for this case.

11 Q. You noted in your report that the absence of
12 a safe threshold is critically important to your
13 analysis?

14 A. Yes.

15 Q. Is there a safe threshold of exposure to
16 mineral spirits?

17 A. Counselor, I feel like you really haven't
18 listened to me, intentionally or otherwise. And so
19 I'll try to explain it maybe differently or more
20 simply. I am responding to the question of whether
21 benzene causes leukemia in this case. I believe the
22 answer is yes.

23 The next question is, does mineral spirits
24 contain benzene? Yes.

25 Did the patient use mineral spirits? Yes.

1 Can the benzene in the mineral spirits be
2 dismissed? No.

3 That is my testimony.

4 Q. I understand what your position is and how
5 you got to your position. I asked a simple question.
6 Is there a safe level of exposure to mineral spirits?

7 A. I would say no.

8 MR. GRAY: Asked and answered.

9 BY MR. SCHULTZ:

10 Q. And what is your basis for that statement?

11 A. Because it has benzene in it and there is no
12 safe level of benzene. I am very consistent in my
13 logic, Counselor.

14 Q. So if there is no safe level of benzene, how
15 do you dismiss certain benzene exposures in the air
16 or in water or food?

17 A. Because it's all probabilistic. And the
18 amount in air, water and food is orders of magnitude
19 less than in your product, Counselor, assuming that
20 you are representing a mineral spirits manufacturer,
21 which it would seem to me that you must be. Either
22 that or you're trying to defend somebody else out of
23 the goodness of your heart.

24 Q. Is there a safe level of exposure to
25 chemicals that have not been determined to be

1 carcinogen?

2 MR. DUPONT: Objection; vague.

3 THE WITNESS: Well, let's take sodium chloride.
4 That's a chemical. And from a cancer point of view,
5 I think there is no evidence that sodium chloride
6 causes cancer. It does cause high blood pressure.

7 Even sodium chloride, one of our most
8 popular chemicals in the food industry, we know it to
9 be unsafe for people who have high blood pressure.

10 So, yeah, there are limits to that. That's
11 sodium chloride. But it's not going to cause cancer,
12 as far as we know.

13 Olive oil. Olive oil is a chemical. It's
14 compounds. There are fats, an amalgam of fats, that
15 don't particularly include benzene, as far as I know.
16 Olive oil is pretty good for you if you're going to
17 eat fats in your diet. We usually know that.

18 But there are people who need to restrict
19 the amount of fats in their diet because of their
20 health. So there is a limit to everything.

21 BY MR. SCHULTZ:

22 Q. Would you consider benzene exposures from
23 the ambient air trivial?

24 A. I would consider them part of the baseline
25 to which all of our leukemia patients are exposed.

1 So trivial in that way. That's what trivial means.
2 You can't boost it above baseline because everyone is
3 exposed to the ambient. It is part of the given, the
4 given from which we can't get away.

5 Q. Do you know what the published literature
6 reports for cumulative lifetime ambient exposures to
7 benzene?

8 MR. DUPONT: Objection.

9 THE WITNESS: It's in the parts per billion
10 range.

11 BY MR. SCHULTZ:

12 Q. You haven't seen any literature suggesting
13 it could be between .5 and 1 part per million in a
14 lifetime?

15 A. I'm not recalling it, as I sit here, but I'm
16 happy to respond to anything you might supply me
17 with, Counselor.

18 Q. Are you familiar with the National
19 Toxicology Program?

20 A. Not as we sit here.

21 Q. You are not aware of its list of carcinogens
22 it's published?

23 A. You asked me if I recognize that name and I
24 am saying I don't. It doesn't mean I haven't seen
25 anything about it. I just don't know, as I'm sitting

1 here.

2 Q. That's fine. I wasn't trying -- just have
3 you ever heard of the National Toxicology Program's
4 list of carcinogens?

5 A. I may or may not have. I don't know, as I
6 sit here. I guess I would say "I don't know" is the
7 appropriate answer.

8 Q. Do you agree with OSHA's decision to
9 regulate benzene as a carcinogen?

10 MR. DUPONT: Objection; vague.

11 THE WITNESS: I agree with OSHA that it should
12 be regulated, yes.

13 BY MR. SCHULTZ:

14 Q. Do you agree with their decision not to
15 regulate mineral spirits as a carcinogen?

16 MR. DUPONT: Objection; vague, misleading.

17 THE WITNESS: There is many reasons to regulate
18 these chemicals, and I think they should all be
19 regulated.

20 Again, I haven't examined recently, as I've
21 told you already -- and I'm sure you remember that,
22 that I haven't reviewed the IARC monograph on mineral
23 spirits recently. So it's hard for me to agree or
24 disagree with it.

25 I certainly know that there is guidelines

1 around how you use mineral spirits. For example, you
2 don't ingest it, you don't use it without appropriate
3 protective gloves. That recognizes there is toxicity
4 to it. So there is regulation around it.

5 I'm sure it has a skull and crossbones on
6 its container.

7 BY MR. SCHULTZ:

8 Q. In your report you have not listed any
9 studies that show a statistically significant
10 relationship between exposure to mineral spirits and
11 AML.

12 A. That's correct.

13 Q. Do you know what the benzene content of
14 mineral spirits is?

15 A. Well, it's been a while since I've looked at
16 that, but I'm remembering things like in the 1
17 percent range. That's what I remember, as I'm sitting
18 here. But as I said, I haven't reviewed that recently.

19 Q. I know you have not cited to any in your
20 report. As you sit here today, can you cite to any
21 article or publication that describes statistically
22 significant increased risk of leukemia from exposure
23 to mineral spirits?

24 A. I thought you just asked me that and I said
25 I couldn't. You just asked me that.

1 I was waiting for some "asked and answered"
2 from my colleague on the left.

3 Q. I thought I asked first whether it was in
4 your report, and that was if you can think of any --

5 A. That's fine. I'm happy to repeat myself.
6 You're paying for it. That's okay.

7 Q. You cited the API 1948 document in your
8 report in footnote. Do you recall that?

9 A. Show me where.

10 Q. Paragraph 16 -- page 16.

11 A. EPA. Is that what you said, EPA?

12 Q. API, 1948. It's in footnote 4.

13 A. Yes.

14 Q. When is the last time you reviewed that
15 document?

16 A. Ten years ago probably.

17 Q. Do you recall the author of the document?

18 A. I don't.

19 Q. Have you ever heard of Marshall Clinton?

20 A. Not as we sit here.

21 Q. Have you ever investigated yourself the
22 basis for the statement that there is no safe level
23 of exposure to benzene that was cited in that 1948
24 document?

25 A. I have read lots of literature about benzene

1 and carcinogenesis, and most of the scientific data
2 which I am aware comes to a conclusion that there is
3 no known safe level of benzene.

4 And it's not a unique finding. That's just
5 one of the first.

6 Q. My question was, have you ever investigated
7 the basis for the statement in that 1948 document?

8 A. I don't remember.

9 Q. Do you know what they cited to?

10 A. I said, "I don't remember."

11 Q. Okay. Earlier you mentioned that you
12 thought that Vogelstein would have an issue with how
13 his work has been utilized by some people.

14 A. I haven't talked to Bert about it, but I
15 wouldn't be surprised.

16 Q. You're aware that there have been some
17 papers that have actually criticized the Tomasetti
18 and Vogelstein work?

19 A. Absolutely.

20 Q. Are you familiar with the Wu papers?

21 A. Counselor, you like to recite things which
22 you can remember because you've specifically prepared
23 for this testimony in a certain way. And I don't
24 have files of names in my head if it's not something
25 I'm prepared for.

1 So I don't particularly know the Wu studies.
2 Doesn't mean I haven't read them. I may or may not
3 have. There is lots of Wus. I read a lot of papers
4 by people with Asian names in a lot of fields.

5 I just a little bit object to the way you
6 present yourself. I'm sorry. Personally.

7 It's not my job to, but I'm just saying,
8 this is why I have difficulty responding to your
9 questions, because you ask them in a way that I feel
10 that are not really responsible, which maybe that's
11 your goal. I don't know.

12 Q. All I asked is if you are familiar with the
13 paper. If you can't remember, as you sit here,
14 that's fine.

15 MR. DUPONT: You said the Wu paper, which lacks
16 a title, lacks publication, lacks a year. There is
17 many ways that the question is inappropriate.

18 BY MR. SCHULTZ:

19 Q. Sure. Are you familiar with the Wu paper
20 that responded to the Tomasetti and Vogelstein work?

21 A. I'm not sure what you're referring to, is
22 all I'll say.

23 Q. Are you aware of any governmental agency
24 that has regulated mineral spirits as a carcinogen?

25 MR. DUPONT: Vague.

1 THE WITNESS: I am not.

2 MR. SCHULTZ: I think that's all the questions I
3 have for you.

4 THE WITNESS: Thank you.

5 MS. WOOTEN: Do you want to take a break?

6 THE WITNESS: I'm fine.

7 MR. GRAY: Could we take a quick five? We've
8 been going a little over an hour since the last
9 break.

10 (Whereupon, a break was taken
11 from 11:17 a.m. until 11:32 a.m.)

12 EXAMINATION

13 BY MS. WOOTEN:

14 Q. Dr. Gore, we met earlier. My name is
15 Virginia Wooten, and I represent Turtle Wax in this
16 matter.

17 A. Turtle Wax.

18 Q. And I just have a few follow-up questions
19 for you. I know we've been going for a while and we
20 touched on the subjects --

21 A. We're good.

22 Q. -- at this point.

23 Do you happen to have a record of your prior
24 expert testimony in cases?

25 A. Andrew has it.

1 Q. Andrew has it? Okay.

2 MR. DUPONT: I can email that out. I'm thinking
3 it's in the Dropbox.

4 MS. WOOTEN: That would be great.

5 MR. DUPONT: Or part of our Rule 26 disclosures.
6 I'll get that to you.

7 BY MS. WOOTEN:

8 Q. What percentage of past cases have you been
9 hired by the plaintiff as an expert witness?

10 A. This plaintiff?

11 Q. In general by the plaintiff's side.

12 A. Oh, so -- so in one case, which is not
13 exactly the same, I worked for insurance companies
14 that indemnify a radiator specialty company in a case
15 having to do with latency.

16 So that was -- the issue at hand was whether
17 liability-carrying insurance companies that carried
18 radiator in the past should be considered responsible
19 for later onset leukemia. So in that case in some
20 ways I was -- I don't know what you call that. But
21 in some ways I was working for radiator as the
22 plaintiff. I don't know. I don't know how you call
23 it. But my medical causation issues here have been
24 for plaintiff.

25 Q. How many cases have you testified in either

1 deposition or at trial?

2 A. 12 to 15.

3 Q. How many have involved benzene exposure?

4 A. Almost exclusively. Yeah, it's almost
5 exclusively benzene.

6 Q. Ever testified in a case in North Carolina?

7 A. I'm not sure. I think I did something in
8 North Carolina that had to do with something else.
9 There was -- there may not have been. There was a
10 case where I was deposed via Skype on little tablets.
11 I think that was North Carolina. That was some rural
12 place in North Carolina. That was last year.

13 Q. Do you happen to remember the name of the
14 case or the parties involved?

15 A. I won't forget the faces of the two attorneys,
16 who were brothers. But, no, I don't remember. I
17 could fish it up for you.

18 There was something in North Carolina that
19 had to do with -- that had to do with a pharmaceutical
20 company that had been taken over by another
21 pharmaceutical company, and I believe it had to do
22 with insurance coverage for an employee who developed
23 leukemia. I don't think it was a causation case, but
24 I don't remember what it had to do with. That was in
25 North Carolina also, I'm pretty sure.

1 Q. Have you ever practiced medicine in
2 North Carolina?

3 A. No.

4 Q. Licensed to practice medicine in North
5 Carolina?

6 A. No.

7 Q. Have you ever been hired by Mr. DuPont
8 before to testify as an expert?

9 A. Yes.

10 Q. How many times?

11 A. I'm going to guess eight.

12 Q. Have you ever been excluded as an expert in
13 a case?

14 A. I was once -- well, there was two
15 situations. One was a case called Schultz -- I think
16 that was you. No, Schultz was not you. Scott --
17 what's his name, from Houston maybe.

18 So there was a case called Schultz in
19 Wisconsin where my testimony was denied and then on
20 appeal it was reinstated. And I think plaintiff
21 ended up winning that case eventually.

22 And then there was a Daubert hearing in
23 Oklahoma City where the judge excluded me under
24 Daubert, whatever that was.

25 Q. Do you remember the name of that case?

1 A. Nope. But it's in my list.

2 Q. In regards to this lawsuit, have you met
3 with Bruce Rhyne ever?

4 A. No.

5 Q. Have you talked to Bruce Rhyne on the phone?

6 A. No.

7 Q. Have you had any direct communication with
8 any party in this case?

9 A. No.

10 Q. Dr. Gore, is your understanding of how
11 Mr. Rhyne used Marvel Mystery oil derived from --

12 A. I thought you said Turtle Wax.

13 Q. Correct.

14 A. They make Marvel Mystery oil? Oh.

15 Q. Is your understanding of how Mr. Rhyne used
16 Marvel Mystery oil, is that derived from either
17 Petty's or Herrick's report?

18 A. I did read Mr. Rhyne's deposition two years
19 ago, and I haven't updated it about specific
20 products -- I haven't updated my knowledge about use
21 since then about specific products.

22 So anything I would have today would be from
23 those other reports.

24 Q. So would it be correct to say that your
25 knowledge of how Mr. Rhyne used Marvel Mystery oil

1 would be derived from his deposition and either
2 Herrick or Petty's reports?

3 **A. Yes, that would be correct.**

4 Q. How about, is your knowledge from -- excuse
5 me.

6 Is your knowledge of the amount of benzene
7 contained in Marvel Mystery oil at the time Mr. Rhyne
8 was using it based upon either Mr. Herrick or Petty's
9 reports?

10 **A. I haven't done any personal research about**
11 **that, no.**

12 Q. So other than Herrick or Petty's reports,
13 you don't have any independent knowledge of the
14 amount of --

15 **A. The first time I encountered Marvel --**

16 THE REPORTER: I'm sorry. I didn't get the rest
17 of her question.

18 BY MS. WOOTEN:

19 Q. So just to clarify, your knowledge of the
20 amount of benzene contained within Marvel Mystery oil
21 would be derived from either Mr. Petty or
22 Dr. Herrick's reports?

23 **A. Otherwise it's a mystery. I believe that**
24 **this is the first -- that was a joke. I believe this**
25 **is the first time that I think that I've actually run**

1 into that particular product, as far as I remember.

2 Q. Just to follow up on that, your
3 understanding of Rhyne's exposure to any benzene from
4 Marvel Mystery oil would be derived from either
5 Herrick or Petty's reports?

6 A. That would be correct. Sounds mysterious
7 though.

8 Q. I see you are punning.

9 A. I can be. I am a dad. I have been known to
10 make dad jokes.

11 MS. WOOTEN: Dr. Gore, I believe that's all the
12 questions I have for you. Thank you.

13 THE WITNESS: Thank you.

14 MS. WOOTEN: Anyone on the phone?

15 MR. FISHKIN: Yeah. This is Andy Fishkin, and I
16 have a few questions.

17 EXAMINATION

18 BY MR. FISHKIN:

19 Q. Doctor, can you hear me okay?

20 A. You are loud and clear. Emphasis on loud.

21 Q. Okay. I'll try to talk lower.

22 A. It's not your fault. It's the --

23 Q. My name is --

24 A. I'm sorry, go ahead. Your name is Andy
25 Fishman, I hear.

1 Q. It is Fishkin. And I represent several of
2 the defendants in the case. I just have a few
3 questions.

4 It's going to be difficult for me not to
5 step over you given the delay on the phone and vice
6 versa, but I'll do my best. Okay?

7 A. And I'll do my best too, but I'm really bad
8 at that.

9 Q. Me too, so we'll see how it goes.

10 Doctor, did you see anything in the
11 materials that you reviewed in this matter that
12 suggests that Mr. Rhyne worked with or around a
13 product that was manufactured or supplied by a
14 company by the name of Univar?

15 A. I don't know the manufacturers. I don't
16 have any manufacturers' names. I happen to know the
17 radiation specialist because I've encountered Liquid
18 Wrench in a lot of work that I've done, but I
19 generally don't know the names of the manufacturers.

20 Q. In paragraph 25 of your report you list
21 various products that I suppose you believe Mr. Rhyne
22 was exposed to. Do you see that?

23 A. I'm getting there. 25?

24 Q. Yes. On page 17 of your report.

25 A. Well, as you know, this was clearly in

1 reference to Mr. Petty's report at the time so -- and
2 I haven't been asked to update my report based on
3 Herrick's report. But I would rely on Herrick's
4 estimations at this point.

5 Q. Put aside for the moment the estimations.
6 Are you aware of any products that Mr. Rhyne was
7 exposed to, other than the products that are listed
8 in paragraph 25 of your report?

9 DEFENSE COUNSEL: Object to the form.

10 THE WITNESS: Go ahead.

11 BY MR. FISHKIN:

12 Q. You can answer.

13 MR. DUPONT: There was an objection and I think
14 he lost the question when the objection was made.

15 THE WITNESS: I thought you were objecting to
16 yourself, which I thought was kind of --

17 BY MR. FISHKIN:

18 Q. I hardly ever --

19 A. Not to be offensive to anybody but --

20 Q. I hardly ever object to myself.

21 But let me do it again. So paragraph 25 --

22 MR. DUPONT: You have to get better at that.

23 MR. FISHKIN: -- you list -- I'm sorry?

24 MR. DUPONT: I say you have to get better at
25 that.

1 BY MR. FISHKIN:

2 Q. Paragraph 25 of your report you list several
3 products. Do you see that?

4 A. I do.

5 Q. Okay. Are you aware of Mr. Rhyne having had
6 exposure to any products other than those products
7 listed in paragraph 25 of your report?

8 A. Counselor, as I've previously testified
9 today, I did not review the patient's prior
10 deposition during my preparation for this deposition
11 and so my memory is not refreshed. Whatever was
12 mentioned in that deposition, I certainly had been
13 aware of at one time and I can become aware of again
14 as soon as I reread that.

15 But as I'm sitting here, I could not
16 enumerate other products.

17 Q. Fair enough. I just want to be sure I
18 understand your testimony. The products that you are
19 aware that Mr. Rhyne was exposed to are the products
20 listed here in paragraph 25 of your report and any
21 other products that Mr. Rhyne identified at his
22 deposition; is that correct?

23 DEFENSE COUNSEL: Object to the form.

24 THE WITNESS: Yeah, essentially that's true.
25 I'm just trying to think if that is comprehensive. I

1 think essentially that's probably true. I think it's
2 possible that in somebody else's testimony some other
3 products theoretically could come up. I just don't
4 remember. I'm sorry.

5 BY MR. FISHKIN:

6 Q. Now, CRC, Doctor, is not listed in your
7 paragraph 25. I will represent to you that Mr. Rhyne
8 testified that he worked with a CRC product. My
9 question is, Doctor, do you know what CRC product
10 Mr. Rhyne worked with?

11 A. As I'm sitting here, no.

12 Q. I think I know the answer to the next
13 question, but I need to ask it anyway.

14 A. Sure.

15 Q. Do you know what the ingredient -- do you
16 know what the ingredients were in the CRC product
17 that Mr. Rhyne claims he worked with?

18 MR. DUPONT: Form.

19 THE WITNESS: As I'm sitting here, I don't, no.

20 MR. FISHKIN: Thank you. That's all that I have.

21 THE WITNESS: Thank you, Mr. Fishkin.

22 MR. JEFFRIES: This is John Jeffries. I guess
23 I'm the last one, unless anybody else wants to jump
24 in.

25 THE WITNESS: Sure.

EXAMINATION

BY MR. JEFFRIES:

Q. Doctor, I represent Kano Laboratories and a product they made known as Kroil oil, K-r-o-i-l. Are you familiar personally with this product at all?

A. Not personally. I've never encountered a can of Kroil oil. Between that and the Mystery oil, I kind of feel a little left out though.

Q. Have you, to your knowledge, ever offered an opinion or testified in a case in which Kano Laboratories in reference to this product was named a defendant or a party in the case?

A. Counselor, to be very clear, the word you are saying before Laboratories is garbled, so I don't know that I've ever had a case with blah, blah, blah Laboratories.

Q. I apologize for that.

A. So could you tell me --

Q. Kano, K-a-n-o, Laboratories.

A. Kano Laboratories doesn't ring a bell for me.

Q. Okay. And I take it then you are not familiar in any way with Kroil oil, how it's packaged, its appearance, how it's dispensed, things of that nature, correct?

1 **A. I am a virgin when it comes to Kroil oil.**

2 Q. I assume that you have never tested Kroil
3 oil or reviewed any tests with respect to the
4 chemical composition of Kroil oil; is that correct?

5 **A. That would be absolutely correct.**

6 Q. And is it fair to say that your only
7 knowledge of Mr. Rhyne's alleged use of Kroil oil
8 comes from your review of his deposition testimony?

9 **A. That's correct.**

10 Q. As you are here to offer your opinions
11 today, do you have any recollection as to the
12 frequency with which he used the product?

13 **A. I apologize that I did not review that**
14 **yesterday.**

15 Q. So you don't have any independent knowledge
16 or any specific recollection about the environment in
17 which the product was used, the form in which he used
18 it, how he used it, whether he used any protective
19 gear or anything of that nature?

20 MR. DUPONT: Compound.

21 THE WITNESS: I would be totally dependent on
22 his testimony and the testimony of any other workers
23 who might have been deposed, of which I'm not aware.

24 BY MR. JEFFRIES:

25 Q. And, again, I apologize if I bounce around a

1 little bit, but some of this stuff has already been
2 covered.

3 You were asked some questions about your
4 previous experience testifying as an expert witness.
5 What amount of your professional time is devoted to
6 offering consulting services in litigation matters
7 versus your clinical practice versus the academic
8 portion of your endeavors?

9 Could you kind of break that down for us?

10 MR. DUPONT: Compound.

11 THE WITNESS: Consulting is a tiny fraction --
12 legal consulting is a tiny fraction of the percent.
13 So it's just an as-happens thing.

14 BY MR. JEFFRIES:

15 Q. When did you start doing that?

16 A. Well, first of all, I'm not sure that I ever
17 said I started doing it. It wasn't something that I
18 set out to do.

19 Q. Right.

20 A. I think the first case that I was involved
21 with was a patient of mine at Johns Hopkins probably
22 in the mid '90s, whose name I don't remember. And I
23 was really a fact witness as well as an expert
24 witness there because I was his physician.

25 And I don't believe I charged for that

1 testimony because I wanted to do it as the patient's
2 doctor.

3 So that would have been about 20 years ago,
4 is my guess.

5 Q. And you recall the first time you testified
6 as a paid consultant or when you offered your
7 services in that regard?

8 MR. DUPONT: Form, compound.

9 THE WITNESS: I never offered it. This is not
10 something I have ever advertised or sought out or
11 anything like that. Ever.

12 So I was approached. I think the first
13 attorney who approached me was Keith Patton. He's
14 the one who moved to Arizona, right?

15 MR. DUPONT: Mexico.

16 THE WITNESS: Actually, I think Mr. Patton was
17 representing my patient. That might have been what
18 happened. And that's where I met Mr. Patton. And
19 I've done a couple of other things along the way for
20 Mr. Patton. And then Scott Free -- from Houston?
21 Scott Frieling -- I want to say Scott Frieling, I
22 think that's his name -- I think, read my testimony
23 probably in that case and he approached me.

24 I don't really know when it was. I mean, in
25 general, I've done one -- no more than, in general,

1 one or two a year max.

2 Max -- like I said, if I've been involved
3 with 15, that's a lot, and I don't think it's been
4 that many. And that would be over 20 years.

5 BY MR. JEFFRIES:

6 Q. To your knowledge, other than the lawyers
7 you just named -- Mr. Patton or Mr. Frieling have any
8 relationship to Mr. DuPont or his law firm?

9 A. I'm sure that they don't.

10 Q. All right. And what is your rate for your
11 time spent testifying in this case?

12 A. \$500 per hour for preparation of report,
13 preparation for deposition, that kind of thing.

14 Q. And one rate for all your services?

15 A. Pretty much. I think I have a daily rate
16 for, you know, out-of-town testimony.

17 Q. What is that rate?

18 A. I was worried you were going to ask that.
19 It used to be 2,500 bucks, but I think I raised my
20 price to \$4,000, but I'm not sure honestly. I have
21 it written down somewhere.

22 Q. That's a per diem? If you have to travel
23 somewhere to testify in a hearing or court, that's a
24 per diem thing?

25 A. That's the idea. I assume that I invoice.

1 And that happens about 50 percent of the time.

2 You wonder why Mr. DuPont likes me given
3 that I'm not too smart.

4 Q. I wanted to ask you some of the things you
5 talked about earlier. And some of the earlier
6 questions is, when you've been consulted by
7 Mr. DuPont about cases in the past, that he will call
8 you and give you information and kind of his
9 assessment of the medical history of the patient, and
10 then you make a determination about whether you want
11 to get involved or believe you should get involved?

12 A. He does not give me --

13 Q. I don't want to mischaracterize.

14 A. That's a little bit of a
15 mischaracterization. Andrew would never ever give me
16 his impressions of a medical thing. He is not
17 qualified to do that and he doesn't think he is
18 either.

19 He can only tell me what the patient -- the
20 client has told him and what his staff may have
21 gotten out of any medical records that they've
22 reviewed.

23 But the first thing he'll do is to send me
24 the pathology report and anything about that and have
25 me assess that. So just to be clear.

1 Q. And how frequently do you have those types
2 of interactions or discussions with him?

3 I mean, how often does he call to bounce a
4 case off you or give you that opportunity?

5 A. It varies between zero times a year and
6 three times a year, I would say. Mr. DuPont
7 understands that this is not something I spend a lot
8 of time on, that I'm not particularly doing this out
9 of a financial imperative.

10 I really like to help patients, so it's
11 really dependent upon my -- you know, whether I feel
12 I have the time and what the time frame is going to
13 be about the thing. Whether it is going to be
14 out-of-town testimony involved, that's part of it.
15 And if so, whether we have enough lead time to be
16 able to put that into my calendar. That's been dicy
17 on occasion.

18 And sometimes he's asked me to look at
19 things that aren't about a case that he is inviting
20 me to talk about. I think he values my opinion as
21 either fact checker or what do I think or this expert
22 said this or his expert is saying that or do I agree.

23 And I never charge him for that kind of
24 service. I just have a generic, friendly, collegial
25 relationship that I'm always happy to help him.

1 Q. I understand. And that's why -- part of the
2 reason that I'm asking. How often do those type of
3 conversations take place?

4 MR. DUPONT: Objection; asked and answered.

5 BY MR. JEFFRIES:

6 Q. Is that more than the zero to three times
7 per year?

8 A. No. I mean usually not, no. That would be
9 part of it.

10 Q. At least several times per year you're
11 receiving communications from him either about
12 consulting to get involved in a case or offering
13 opinion on something an expert said or something with
14 relation to your professional background and how it
15 applies to a case he may be handling. Is that a fair
16 assessment of it?

17 A. No. The range I gave you was zero to three
18 times per year. That includes zero, and there are
19 many years where it is, in fact, zero.

20 Q. By your estimation you said eight to ten
21 cases in which you testified as an expert in matters
22 Mr. DuPont has been litigating?

23 A. I'm guessing eight, but I don't know. We'll
24 provide you the list.

25 Q. Over what period of time?

1 As Ms. Wooten indicated in her questioning,
2 that was not included in the materials we were
3 provided, otherwise I probably wouldn't be asking you
4 these questions.

5 A. I don't mind answering questions to the best
6 of my ability.

7 I'm guessing over 12 years. You know, when
8 you get to a certain age like mine, which is 61,
9 almost 62, putting anything in sequence is really
10 tough in terms of -- like, you know, I could say I've
11 known Andrew for 30 years. Well, he'll object to
12 that because he would have been ten years old or
13 something at that point.

14 But it feels like -- I feel like I've known
15 Andrew for a long time and I value him as a person.
16 So I enjoy working with him because he's a great guy,
17 and I feel like his heart is in the right place.

18 So I don't know how long it's been. I feel
19 like in some ways we're old colleagues. It could be
20 five years. I don't know.

21 We'll supply that to you. I'm very happy --
22 I'm sure Mr. DuPont will supply that to you.

23 MR. DUPONT: Yeah, I'm sorry.

24 BY MR. JEFFRIES:

25 Q. I agree. I'm sure it was just an oversight.

1 A. Totally. I mean I'm speaking for him.
2 Nobody asked me to do it.

3 Q. And, again, I apologize for some of the
4 questions that I'm going to ask you are out of my
5 ignorance more than anything else.

6 A. Don't be apologetic. We expect lawyers to
7 be ignorant.

8 Q. I'm with you. And that's one thing we'll
9 agree on.

10 A. Good.

11 Q. Generally speaking, is AML a relatively
12 common form of cancer?

13 A. No. There are about 10 to 20 thousand cases
14 in the U.S. per year. It's considered uncommon.

15 Q. That 10 to 20 thousand cases in a population
16 of somewhere around what, 350 million, depending upon
17 how many of the illegals you count?

18 MR. DUPONT: That's not a very nice word to use,
19 Counsel. You can comport yourself in a better manner.
20 BY MR. JEFFRIES:

21 Q. 350 million?

22 MR. DUPONT: No person is illegal. If so -- if
23 that were the case, all your ancestors probably could
24 be considered illegal.

25 THE WITNESS: I believe that our census data

1 actually enumerates documented and undocumented
2 workers -- residents to the extent that such can be
3 determined. And, of course, that's been the subject
4 of some rather interesting political debate this year
5 in terms of whether that should be a collected
6 question, citizenship.

7 But the goal of the --

8 BY MR. JEFFRIES:

9 Q. I'm asking about --

10 A. But the goal of the census, as you know, is
11 to enumerate every person living in the United
12 States, be they three-fifths of a person or five-
13 fifths of a person.

14 Q. What percentage of that population is
15 affected by this disease?

16 A. Well, you'll have to do the math because I'm
17 a little tired here. But it's 10 thousand to 20
18 thousand out of whatever denominator you want to
19 pick. I think 350 sounds pretty good. And if I'm
20 not mistaken, it comes out to something like 10 out
21 of 100,000, or something like that.

22 Q. Is it true that most of those cases have no
23 known identifiable cause?

24 MR. DUPONT: Compound.

25 THE WITNESS: The majority of cases of AML do

1 not have an attributable cause outside of the various
2 things we discussed, which cause cancer all the time,
3 but that we can't isolate outside of every other
4 person in the United States of America.

5 BY MR. JEFFRIES:

6 Q. All right. And are you aware of any
7 literature, or whatever the case may be, that
8 establishes a percentage of those cases that are
9 determined to be caused by industrial exposure of
10 benzene?

11 MR. DUPONT: Vague.

12 THE WITNESS: I don't think there is a document
13 like that, and I'm thinking -- because I'm personally
14 writing a review, a critical review, of the
15 occupational low-dose benzene exposure literature
16 with one of our epidemiologists. And I don't
17 believe -- I'm not sure that's really an
18 ascertainable number because those questions aren't
19 asked routinely, so I'm not sure.

20 BY MR. JEFFRIES:

21 Q. Tell me about the article you're writing.
22 An article on low-dose exposure to benzene?

23 A. Yep.

24 Q. What's the context of that?

25 A. We are submitting it to Blood Reviews. It's

1 going to be very much along the line of the kind of
2 literature that we discussed in these matters and --
3 you know, for a more clinically oriented audience,
4 you know, of leukemia doctors and other physicians
5 taking care of patients with hematologic malignancies
6 to increase awareness of potential occupational risks
7 so that they can be better informed in advising their
8 patients.

9 Q. Okay. So the target audience for the study
10 is clinicians who are interacting directly with
11 patients and assessing their cases with regard to
12 these low-dose exposures?

13 A. Well, medical students, anybody who is
14 interested in reading about benzene and leukemia.
15 I'm sure it's a pretty broad -- Blood Reviews is read
16 by a pretty broad audience.

17 Q. Tell me who commissioned the study.

18 Is there a -- I don't know how you describe
19 it. Is there a goal? A target? A specific issue
20 you thought to address?

21 MR. DUPONT: Compound.

22 THE WITNESS: It's an academic endeavor aiming
23 to give a critical assessment of the literature.

24 BY MR. JEFFRIES:

25 Q. And that literature deals specifically with

1 low-dose exposure to benzene and their relationship
2 to what, AML or --

3 **A. Myeloid malignancies.**

4 Q. And that, as you talked about earlier, is
5 kind of the broader categories that includes AML and
6 some other variations of this type of malignancies at
7 different stages, right?

8 A. I mean, the most common one we would talk
9 about would be MDS, but I think you could talk about
10 things like myeloproliferative neoplasms, a chronic
11 myeloid leukemia. But there is far less literature
12 about those.

13 Q. Right. And I'm sorry, I was just trying to
14 narrow it down. It includes a broader spectrum of
15 things beyond AML, correct?

16 A. Correct. But most of it will be around AML
17 and MDS.

18 Q. Can you explain to me what was studied?

19 What was the clinical review of?

20 A. Well, it's a clinical review of -- it's a
21 critical -- critical review of epidemiological
22 literature.

23 Q. In what context? Explain to me like I am a
24 5th grader, if you could.

25 A. Let's say you are a fellow in oncology and

1 you've just learned that benzene causes leukemia.
2 But you are a chemistry major, so you say, Gee, I
3 know in organic chemistry lab they warned us about a
4 lot of chemicals and they warned us nothing is pure
5 and I wonder if I was at risk. Or it seems like a
6 lot of things that people commonly use like paint
7 thinner and other things may have benzene in it and
8 they kind of want to know about that.

9 You could spend many years going through the
10 literature a little bit at a time, as I and many
11 others have done, but wouldn't it be nice to have a
12 handy resource where people like me working with
13 epidemiologists have not only sort of summarized the
14 literature, but evaluated it.

15 So that's kind of what it's about.

16 Q. Correct. I would have loved to have
17 something like that in the last month.

18 A. Well, just wait.

19 Q. What stage is it in?

20 Is it published yet?

21 A. No. We're still writing it.

22 Q. Is it concluded?

23 Are there conclusions or key findings that
24 are -- that you are in a position to discuss now, or
25 is it still in the works?

1 **A. In the works.**

2 Q. Was there a specific type of exposure that
3 you studied?

4 Or was it all occupational in nature or --

5 **A. Well, we've looked at environmental**
6 **accidents as well.**

7 Q. Okay. When you say "environmental
8 accidents," you mean like a chemical spill or
9 something like that?

10 **A. Yep.**

11 Q. Is there any evaluation of like -- and some
12 of the lawyers have asked you questions about, based
13 on exposures in the environment, food or water, those
14 types of exposures. Are they analyzed in your study?

15 MR. DUPONT: Compound.

16 THE WITNESS: We certainly take everything in
17 that context, of course.

18 BY MR. JEFFRIES:

19 Q. I'm sorry, I didn't mean to get sidetracked.

20 **A. That's all right. And, by the way, I would**
21 **give you at least a 6th grade credit.**

22 Q. You're generous.

23 Is there a typical demographic for an AML
24 patient in terms of age, race, sex, age of onset of
25 the symptoms?

1 MR. DUPONT: Vague.

2 THE WITNESS: AML can present in infancy, but
3 the majority median age would be around 60. But the
4 incidence persists as people age.

5 BY MR. JEFFRIES:

6 Q. Right. What about, is there any one -- is
7 it more prevalent in males or females?

8 A. There is a slight male predominance.

9 Q. Is it more prevalent in members of any
10 different race or other demographic of that nature?

11 A. Latinos appears to be very -- particularly
12 sensitive to myeloid malignancies. But based on
13 numbers, Latinos still represent a minority in our
14 country.

15 But the incidence rate among Latinos is
16 probably higher than among people of European origin.

17 Q. Is that a statistically significant amount
18 or is that just kind of observational?

19 A. Well, you know, I can't answer that with 100
20 percent surety, but I believe that there probably is
21 a statistically higher rate of AML among Latinos.
22 But I wouldn't go to mat on that. I'm pretty sure
23 there is.

24 Q. In Mr. Rhyne's case, his age and sex at
25 least were consistent with which you've seen in the

1 more common -- where this disease is more common,
2 correct?

3 MR. DUPONT: Compound.

4 THE WITNESS: It is certainly not an unusual
5 presentation, if that's what you mean.

6 BY MR. JEFFRIES:

7 Q. And what are some of the other risk factors
8 for the development of AML?

9 A. Smoking, prior chemotherapy, prior
10 radiation, obesity is now being examined more and
11 more, familial cancer syndromes. Those are the main
12 ones of identifiable --

13 Q. What about --

14 A. What about diet?

15 Q. What about diet?

16 A. Diet?

17 Q. Yes.

18 A. No. Were you suggesting something in the
19 diet specifically?

20 Q. No. I mean, are --

21 A. Benzene in your diet is bad. And I wouldn't
22 drink Mystery oil or mineral spirits if I were you.

23 Q. All right.

24 A. Just saying. No matter what IARC says.

25 Q. Any other chemical exposures that are risk

1 factors?

2 **A. Oh, we talked about a variety of chemotherapy**
3 **drugs.**

4 Q. Right. To your knowledge, he's never
5 undergone any of that type of therapy, has he?

6 **A. No.**

7 MR. DUPONT: Not prior to his diagnosis. That's
8 your question?

9 THE WITNESS: You know, pesticides -- pesticides
10 are associated. I'm sorry, I'm just kind of tired
11 right now.

12 For a while there's been a thing about hair
13 dye. That's been kind of debunked. Probably
14 chemical dyes, aniline chemical dyes and other dyes
15 in the printing industry, definitely.

16 So there's a handful of things that have
17 been studied and are likely associated. But I gave
18 you the big ones.

19 BY MR. JEFFRIES:

20 Q. Okay. And in particular with regard to
21 benzene -- and you mentioned this earlier -- is
22 benzene something that people are exposed to in their
23 daily lives?

24 **A. In minute amounts.**

25 Q. What are some of the sources of benzene

1 exposure that you would consider when you are
2 making -- I think you referred to it as like a
3 baseline assessment?

4 MR. DUPONT: Vague.

5 THE WITNESS: Well, baseline for a meaningful
6 different-than-normative-exposure for most patients
7 with leukemia, it's through petrochemicals, whether
8 it's diesel fuel, petroleum products, solvents like
9 Liquid Wrench and others. Those would be the vast
10 majority that I've seen.

11 You know, I do run into patients who are
12 involved in industries where I might not be familiar
13 with the products they are using. I did have a case
14 that I was involved with once that had to do with the
15 upholstery industry, which I know very little about,
16 and I did get to learn about some of the products
17 involved in upholstery cleaning and stuff that I
18 couldn't recite to you at all right now and learned
19 about, in this case, benzene concentration there. So
20 that kind of surprised me.

21 If I have a patient who is involved with
22 some weird job that involves smelly chemicals in
23 particular -- obviously they don't all smell -- I
24 would always say that, I don't know a lot about the
25 chemicals that you're using, but a lot of chemicals

1 do contain substances that can cause leukemia.

2 So if you're interested in me looking into
3 it, I would be happy to. If you can get me the MSDS
4 sheets and stuff, I could certainly spend some time
5 in doing it.

6 BY MR. JEFFRIES:

7 Q. I guess I was more concerned with this
8 concept you talked about around our environmental
9 exposure. For example, things like exhaust fumes
10 from vehicles, is that a source of benzene exposure?

11 A. Yeah, it is. But unless you're working like
12 in a toll booth, or something like that, you are not
13 going to get enough -- what's in smog contributes to
14 the -- again, the ambient rate of cancer. And we
15 can't erase that.

16 But if somebody is working in a toll booth
17 and all these things with bad exhaust things are
18 coming through, that might be a different story.
19 Might be.

20 Or somebody who is working in a muffler
21 business -- I'm just talking off the top of my
22 head -- where you might think that there is a
23 different level of exposure to automobile exhaust
24 than what you and I do with our windows rolled up and
25 the air conditioning on.

1 That's a different story from somebody who's
2 working -- or somebody -- there was one case, the one
3 that I was Daubert'd on, was about a woman who got
4 leukemia who lived in the shadow of a Conoco -- of a
5 very notorious Conoco plant that was subsequently
6 shut down. And they actually evacuated the
7 neighborhood and made it into a Superfund site. And
8 she was downwind of all this terrible stuff coming
9 out of there. And there was stuff in the water and
10 everything.

11 And that was -- that's the only case that
12 I've actually done like that.

13 But I have had patients who live in similar
14 areas. And I've raised that question to them, and if
15 they want to follow up on that, that's their
16 business.

17 Q. You mentioned diesel fuel. Is it more
18 prevalent in diesel fuel than in non-diesel fuel?

19 MR. DUPONT: Form.

20 THE WITNESS: You know, I just mentioned diesel
21 fuel because it seems like some of the people that
22 I've worked with over the years tend to use diesel
23 fuel as a cleaning agent. I don't know if that's
24 just the people I run into, but it seems like in some
25 auto shops and stuff -- maybe because it's cheap.

1 They have these vats of diesel fuel and they put
2 stuff in there with no gloves on and it's really
3 awful.

4 BY MR. JEFFRIES:

5 Q. Is there benzene in gasoline?

6 A. There is, yeah, a little bit.

7 Q. And are people exposed to it in gasoline
8 fumes when you are filling up your car?

9 A. Yeah. Small amounts, absolutely. Again, I
10 would attribute that to the ambient risk that we're
11 all at, sure.

12 Q. And are you aware of any study that kind of
13 cumulatively or quantitatively assesses that ambient
14 risk?

15 A. That's impossible to do because everyone is
16 exposed to it. So in order to assess the risk, you
17 need an exposed and an unexposed population. So you
18 need to have the population of all of those of us who
19 do everything like you and I do, drive around in cars
20 and pump gas and fly in airplanes and everything
21 else, and a bunch of monks in Shangri-La maybe who
22 have their HEPA-filtered, you know, retreats and they
23 breathe great mountain air and drink from the source
24 of the Ganges and everything -- or whatever.

25 We don't have a lot of studies like that.

1 Q. Right. But is there any -- are you aware of
2 any effort to quantify the amount of that baseline
3 exposure in terms of a parts-per-million calculation
4 like you see --

5 A. There are definitely things like that. As a
6 matter of fact, there is a study just out this past
7 year, recently -- I'm not going to be able to come up
8 with the name -- where they actually went to data
9 that -- I think it's the EPA. I think it's the EPA,
10 but it could be another agency and I've not memorized
11 the alphabet soup.

12 But there is a nationwide environmental
13 monitoring of benzene that's done on a routine basis.
14 And this particular paper associated risk of leukemia
15 regionally with the measured so-called ambient
16 benzene population. And although it's an early
17 study, there is a suggestion that there is an
18 association with the ambient levels.

19 Q. All right. Do you recall any more specifics
20 about the study or where to find it?

21 A. I would be happy to supply it to you, but I
22 can't come up with it from my feeble brain right now.
23 And the author, I can picture her, but I can't tell
24 you her name.

25 Q. Okay. So there was some -- that study

1 involved some calculation of the amount of ambient
2 exposure?

3 A. Yeah. Based on -- based on routine
4 monitoring that the government does.

5 Q. And that -- was that based on what
6 geographic region you may be in?

7 A. Well, they have different stations where
8 they monitor the stuff around the country. So it's
9 whatever the National Institute of Environmental
10 Health, or whoever it is that does this -- it is
11 whatever data they already collect, and then they
12 cross-match it against the regional incidence of
13 cancer, in this case leukemia.

14 It is from the National Institutes of
15 Health. I just can't come up with her name. She is
16 terrific.

17 Q. But that study suggests there is some level
18 of benzene in the environment that we are all exposed
19 to?

20 A. That's not a question. Everybody knows
21 that. This is a question of whether the variations
22 in the ambient levels leads to a variation in
23 regional incidence, and it would suggest that
24 probably yes. That we can't -- some of these things
25 that you want to call idiopathic or unknown may well

1 be associated with environmental exposures.

2 It is just hard to get that since you don't
3 have, you know, your big population of Tibetan
4 priests, or some similar thing. I don't mean to
5 disparage Tibetans. I think that would be a
6 great life.

7 Q. And the -- okay. Is it your opinion that
8 exposure to very small amounts of benzene can cause
9 AML?

10 A. Can or cannot?

11 Q. Can.

12 A. Yes. Well, can contribute to the cause,
13 yes.

14 MR. DUPONT: Vague.

15 BY MR. JEFFRIES:

16 Q. And, again, I think you mentioned earlier
17 there is a dose relationship. The greater the
18 exposure, the greater the risk?

19 A. Correct. Yep.

20 Q. Determining the amount of the exposure
21 accurately would have a significant impact on the
22 accurate assessment of the risk. Is that a fair
23 statement?

24 MR. DUPONT: Form.

25 THE WITNESS: I don't think we are good enough

1 to assess risk at that level, Counselor. I think,
2 you know, in a court of law, convincing evidence
3 requires reliance on epidemiological data, which is
4 associated with statistical parameters. So we do our
5 best to understand whether the occupational exposure
6 falls in those ballparks.

7 It doesn't mean that people who have
8 occupational exposure below those levels don't have
9 benzene-related cancer. It just becomes a question
10 of what can you, you know -- how cogent and
11 convincing a legal argument can you make.

12 But from a biological point of view, I'm
13 sure there are many people of occupational leukemias
14 at levels that are probably lower than that which has
15 been demonstrated to be statistically significant in
16 the epidemiological literature.

17 BY MR. JEFFRIES:

18 Q. I think you reference in your report there
19 is no way to identify what exposure may have resulted
20 in the initiation of the process of forming the
21 disease --

22 A. Correct.

23 Q. -- at the time that occurred?

24 A. That is correct.

25 Q. But the extent to which you could say with

1 any degree of medical certainty or scientific
2 probability that a specific exposure or type of
3 exposure caused a condition is influenced by the
4 magnitude of the exposure; is that right?

5 MR. DUPONT: Vague, compound.

6 THE WITNESS: I would say on a probabilistic
7 basis, that has to be true.

8 BY MR. JEFFRIES:

9 Q. Okay. In other words, the greater the
10 exposure, the more likely that someone in your
11 position could reach a reliable conclusion that there
12 was some relationship between that exposure and the
13 onset of the disease?

14 A. Because I can't isolate each exposure, I
15 don't do that. However, if you asked me on a
16 statistical basis if somebody has -- 99 percent of
17 somebody's benzene exposure is due to product A and 1
18 percent to product B, I don't exonerate product B,
19 because it's part of the cumulative benzene exposure.
20 But on a probability point of view, it's more likely
21 product A. But it doesn't take away the fact that
22 product B also was part of the source of benzene
23 exposure.

24 Q. All right. I understand what you are
25 saying. Thank you.

1 So you don't believe there is a threshold
2 level of exposure at which you would have to reach to
3 state with a reasonable degree of medical certainty
4 that that exposure caused or contributed to the
5 development of AML in someone like Mr. Rhyne?

6 MR. DUPONT: Vague and compound.

7 THE WITNESS: Your question is complicated
8 because of the implied legal implications, to a
9 reasonable degree of medical certainty. So my report
10 and other testimonies that I've given, that you are
11 certainly familiar with if you look, have stated
12 there is no safe threshold, and any amount of
13 exposure to benzene may be contributory or causative,
14 and, therefore, there is no threshold. I do believe
15 that is the case.

16 I also recognize the difficulty of making
17 that case in the absence of achieving certain
18 cumulative exposures which are known to be associated
19 with statistically significant increases in risk of
20 leukemia just from the point of view of making a
21 convincing argument.

22 I don't know if that answers your question
23 the way you'd like it, but that's the case. That's
24 how I approach it.
25

1 BY MR. JEFFRIES:

2 Q. Well, you referenced earlier -- and I don't
3 know if it was just by way of example, but in your
4 testimony earlier today, you referenced a level of 3
5 parts per million-years. Is there some kind of
6 significance to that level?

7 A. Yeah. I made another kind of offhand
8 comment in the Schnatterization, meaning that is the
9 level of exposure that was tested in the Schnatter
10 paper that was associated with the statistically
11 significant increased risk of myelodysplastic
12 syndrome in that case.

13 Now -- and then you get into what levels did
14 they test it. Because biology isn't a binary --
15 almost never a binary thing. So statisticians kind
16 of pick the best numbers to look at based on the
17 numbers they have and the distributions they have,
18 but it is only bad interpreters of statistics then
19 glom on to that and say 3 is the number. 3 is the
20 level that they showed statistically increased risk
21 for in that paper with certain confidence bounds
22 around it.

23 And because that's what's published, I can
24 make a credible argument based on that for somebody
25 who has 3 or more.

1 Now, there is the Stenahom (phonetic) paper,
2 if you want to talk to that, that suggests that
3 levels in the less than 1 parts per million-years is
4 associated with a myeloid malignancy.

5 So the data are evolving. One is what's
6 biologically true and what I tell a patient and
7 stuff, and one is what I'm willing to spend my time
8 on preparing for a trial if somebody were to ask me
9 to do so.

10 Like I say, I don't really do this for
11 money. And if I think that it's not going to be a
12 useful exercise for the parties, I'll give the
13 attorney that feedback, that this seems borderline
14 that you can win this case. And I can tell you,
15 Yeah, it sound like this could be a benzene case, but
16 unless the exposure is more clear, I don't think you
17 can make a case and I don't really want to be
18 bothered with that. Not that I don't feel bad for
19 the patient.

20 I tell that to my own patients actually that
21 ask me about lawsuits. I say, Well, it sounds to me,
22 just from what you're telling me -- I have a patient
23 right now who is in remission from leukemia and he
24 has a job somewhere near the ferries in Bridgeport, I
25 think, and it sounds like he is exposed to all sorts

1 of terrible stuff that have benzene. I told him, I
2 think that's probably the case. But until a real
3 industrial hygienist were to take his history and
4 quantify that, I could be totally off base.

5 But usually my nose about this is pretty
6 good. These stories occupationally stand out because
7 most people in our society don't work in those kind
8 of jobs, at least that I see.

9 Q. Was there anything of significance to you in
10 terms of how you would evaluate a case for -- I don't
11 know if legal causation as you refer to it -- at
12 either of the levels, the 1 part per million or 3
13 parts per million?

14 MR. DUPONT: Objection; form.

15 THE WITNESS: Is there anything significant?
16 Yes, I have published data from peer-reviewed
17 credentialed publications that I can use to make my
18 argument. I think that's important.

19 BY MR. JEFFRIES:

20 Q. You made the argument at 3 parts per
21 million-years or more or at 1 part per million-years
22 or more based on which of those studies you elect to
23 cite; is that right?

24 MR. DUPONT: Objection; form.

25 THE WITNESS: You know, I hesitate to be put

1 into any kind of corner here because my beginning
2 premise is that there isn't a safe level of exposure
3 to benzene. So, you know, I think that there is less
4 literature in the lower doses. Maybe there is going
5 to be more soon. Maybe there will be biomarkers
6 soon. I don't know.

7 I just think the -- you know, I just think
8 your level of legal certainty is higher the higher
9 you get.

10 It used to be like 40. The old literature
11 said 40 parts per million-years.

12 BY MR. JEFFRIES:

13 Q. I was looking at your report, and it looks
14 like you've got two paragraph 24s, but then on the
15 bottom of page 17 you reference the Australian study
16 that found that at 8 parts per million-years the
17 likelihood was seven times greater than that of the
18 general public to contract this form of leukemia.

19 And then they found that at 4.79 parts per
20 million-years it was 2.5 times more likely.

21 I guess my question is, as those numbers
22 change, those probability levels are altered
23 significantly, right?

24 MR. DUPONT: Objection; form, vague.

25 THE WITNESS: The increased risk over the

1 general population changes, that is correct. But
2 that doesn't mean that those people at that lower
3 exposure who have higher risks than normal didn't
4 have leukemia caused by benzene. It just means that
5 of people who got that exposure, fewer of them
6 developed leukemia. But it is so many more of those
7 people who don't have that exposure.

8 So for those that have leukemia, I think we
9 can conclude that it's because of the benzene, not
10 that they didn't have leukemia associated with
11 benzene. It is just that they were the unlikely in
12 that group.

13 BY MR. JEFFRIES:

14 Q. Right. But that cites a level of probability
15 that you're willing to apply to that scenario based
16 upon that --

17 A. No.

18 Q. -- calculation, right?

19 A. No.

20 MR. DUPONT: Object to form, vague.

21 THE WITNESS: I disagree with you, Counselor.

22 BY MR. JEFFRIES:

23 Q. Can you explain that for me?

24 A. Because they are in a range that you know is
25 definitely associated with a higher risk of leukemia.

1 It is like, there you have it.

2 It's like if the president talks to another
3 president of another country and says, You gotta do
4 me a favor. He asks that question. You can
5 attribute whatever you want to it.

6 Q. And I guess we are just looking at the
7 numbers. At 8 parts per million -- in this study
8 that you cited, at 8 parts per million-years, it is
9 seven times more likely. You drop that down to 4.79,
10 that's not even cutting it in half, but it reduces
11 the likelihood threefold.

12 I guess my question is, you continue to go
13 down, you continue to see that kind of precipitous
14 drop in the amount of increased risk?

15 MR. DUPONT: Objection.

16 THE WITNESS: There is definitely a dose
17 relationship. Nobody would argue with that. There
18 is a dose relationship.

19 I think in that particular paragraph I was
20 summarizing the results of one particular study. I
21 guess I could have copied in the graph from the
22 study, but I don't presume that everybody has the
23 equal ability in the legal profession to analyze
24 graphs.

25 It's probably not part of your LSATs, maybe

1 it is. But it's part of our MCATs. You're expected
2 to be able to analyze graphs like that. And I
3 wouldn't expect a jury to be able to necessarily
4 understand that without me explaining it.

5 BY MR. JEFFRIES:

6 Q. All right. But -- well, a jury can
7 understand that as the amount of the exposure goes
8 down significantly so does the risk?

9 MR. DUPONT: Objection; form.

10 THE WITNESS: Right. It's still related. I
11 totally agree with you there.

12 BY MR. JEFFRIES:

13 Q. My question is, you would agree it is
14 important -- when assessing this probability or
15 likelihood that a particular exposure was a causative
16 factor or a substantial causative factor, it is
17 important to have as accurate a base of information
18 that you can obtain with regards to making that
19 calculation?

20 MR. DUPONT: Objection; vague.

21 THE WITNESS: Knowledge is always power and the
22 truth will set you free.

23 BY MR. JEFFRIES:

24 Q. All right. I think I can accept that answer
25 and move on. I have just a few questions about just

1 some items from your report.

2 And I think you were asked this earlier.
3 The report is dated October 1, 2017, correct?

4 **A. I believe you. I don't have any reason to**
5 **think that's not correct.**

6 Q. And you haven't done any kind of updated or
7 revised report since that time?

8 **A. I have not.**

9 Q. Have you formed any additional or new
10 opinions since -- with regard to Mr. Rhyne's case
11 since the time you authored this report?

12 MR. DUPONT: Objection; vague.

13 THE WITNESS: You know, I am aware that
14 Mr. Petty is no longer testifying, that Mr. Herrick
15 has done exposure calculations which do not include
16 dermal exposure. I don't personally believe that
17 dermal exposure should be excluded, but that's fine.
18 And that even without considering the dermal exposure
19 estimates of Mr. Petty, that the estimates of benzene
20 exposure that Mr. Herrick comes with are certainly
21 within the range that anybody who understands the
22 epidemiological literature would agree is associated
23 with an increased risk of AML. So that would be the
24 update to my report.

25

1 BY MR. JEFFRIES:

2 Q. You told us earlier that you had not read
3 Dr. Herrick's report; is that right?

4 A. I've looked at it, but I haven't read it
5 cover to cover, no.

6 Q. How much of it have you reviewed or read?

7 A. I'm not sure how to quantify it. I would
8 say I've probably skimmed it. I looked particularly
9 at the exposure tables.

10 That's what I would say.

11 Q. How much time do you think you spent
12 reviewing it?

13 A. Probably an hour.

14 Q. Ten minutes, 30 minutes, an hour? Okay.
15 Did you bill for that time?

16 A. I haven't billed at all for this case. Oh,
17 I don't know if I billed for the -- I might have
18 billed for the report originally. I don't know.

19 I haven't billed at all this year for this
20 case. I might have billed in 2017.

21 Q. Do you intend to bill for the time you spent
22 reviewing Dr. Herrick's report?

23 A. No -- yes. Honestly, I'll roll it into
24 deposition prep, which will probably come out to be
25 three or four hours, something like that, five maybe.

1 Q. In your report on page 2 underneath section
2 2 discussing methodology, on the third line -- second
3 and third line you said, "it is important to gather
4 as much information as possible regarding the
5 person's exposure to the chemicals of interest."

6 Have you done any independent investigation
7 to gather information regarding Mr. Rhyne's alleged
8 exposure to the chemicals of interest?

9 A. I have not.

10 MR. DUPONT: Objection; vague.

11 BY MR. JEFFRIES:

12 Q. Any reason why?

13 MR. DUPONT: Objection; vague.

14 THE WITNESS: I trust our nurses and nursing
15 assistants to get blood pressure. That's their job,
16 to gather data for me.

17 When I used to run a lab, I counted on the
18 laboratory technicians and postdoctoral fellows to
19 generate data and present it to me.

20 That's called running a business or running
21 a practice or running a team.

22 And in this case I rely on industrial
23 experts proffered by Mr. DuPont to do that analysis
24 for me. That's what they are trained to do. And I
25 have to use them as my Bronners, you know, as my

1 measuring.

2 I count on the weather people to tell me
3 what the chance of a hurricane tomorrow is. I count
4 on Siri to do this and that for me, although I'm not
5 really a big Siri user honestly.

6 BY MR. JEFFRIES:

7 Q. Who is your client in this case?

8 A. My client? I'm a witness. I'm not -- I
9 don't have a client.

10 What do you mean? I don't know what that
11 means.

12 Q. Who is your client? Mr. Rhyne, Mr. DuPont?

13 MR. DUPONT: Objection; asked and answered.

14 THE WITNESS: I don't feel like I have a client.
15 I feel like I'm an advisor, a witness.

16 BY MR. JEFFRIES:

17 Q. To who?

18 MR. DUPONT: Object.

19 THE WITNESS: To the plaintiff's case. I'm not
20 sure what you mean.

21 I will submit my invoices to Locks Law for
22 my time spent. And I don't know how they manage
23 their accounting in terms of where I get reimbursed
24 from. That's their business.

25 I guess at some level, you know, Locks Law

1 will issue a 1099 tax form for nonemployment
2 compensation and I'll be considered a consultant for
3 them.

4 So I guess they are a client for my
5 consulting business, I guess, if that's how you want
6 to look at it.

7 BY MR. JEFFRIES:

8 Q. Have you ever interviewed Mr. Rhyne or his
9 wife?

10 A. Nope.

11 Q. Never evaluated him?

12 A. Nope.

13 MR. DUPONT: Objection; vague.

14 BY MR. JEFFRIES:

15 Q. Did you obtain any medical documentation
16 about his prediagnosis, medical history?

17 MR. DUPONT: Vague.

18 THE WITNESS: Yes.

19 BY MR. JEFFRIES:

20 Q. What did you review in that regard?

21 A. Well, this was a long time ago, but there
22 was -- I know that there was no -- there was
23 documentation of normal blood counts in some time
24 period before and kind of general, you know, medical
25 care, nothing of which -- nothing that stuck out in

1 **my mind, as I'm sitting here.**

2 Q. How far in advance of his diagnosis did you
3 review these records?

4 MR. DUPONT: Objection; vague.

5 THE WITNESS: How far?

6 BY MR. JEFFRIES:

7 Q. Was it a five-year history, ten-year
8 history, 20-year history?

9 MR. DUPONT: Vague.

10 THE WITNESS: All of his histories include past
11 medical history. That's a cumulative thing. I have
12 his primary care doctor's records. That was two
13 years ago. I can't really tell you that honestly
14 with any degree of certainty.

15 BY MR. JEFFRIES:

16 Q. Over what period of time do you have his
17 primary care doctor's records?

18 A. **I don't have the answer to that right now**
19 **for you.**

20 Q. Well --

21 A. **But it's in the Dropbox. Sorry.**

22 Q. How much of that would you typically want to
23 review in your quest to gather as much information as
24 possible about the patient?

25 MR. DUPONT: Objection; vague.

1 THE WITNESS: It depends on the case. I mean,
2 if I review a past medical history that's taken by
3 some good physicians at the time of presentation of
4 leukemia, that will point me to potential things to
5 be alerted about.

6 Let's say Mrs. Jones has leukemia and she
7 was treated ten years ago for ovarian cancer, that's
8 going to get my attention. I'm going to make sure I
9 get the records about how she was treated for ovarian
10 cancer because that's likely to be a causative thing.

11 Somebody who is treated for breast cancer
12 and lymphoma and develops leukemia, I need to know
13 that.

14 But if there is nothing untoward in their
15 past history, there is no reason to go back that far.
16 I don't know what you would find.

17 BY MR. JEFFRIES:

18 Q. But you don't recall physically how much of
19 that you reviewed in Mr. Rhyne's case?

20 A. Since it was two years ago, I don't remember
21 that.

22 Q. Okay. Did you request any medical
23 documentation with respect to his sister's treatment
24 for AML?

25 A. Well, you know, I think that -- I think that

1 I remember that we discussed whether such data were
2 available. This would have been two years ago.

3 And, of course, there are many HIPAA issues
4 involved here to start with that need to be
5 surmounted. I don't remember hearing more about it
6 at that time.

7 So that's what I remember about that
8 particular topic.

9 Q. When you say you discussed it, you mean with
10 Mr. DuPont?

11 A. Yeah. Do you have any information about the
12 sister or -- and, again, this is the vaguest of
13 memories, but I think the discussion was, Well, yeah,
14 we're going to talk about it, but there are HIPAA
15 issues and we can't just solicit those records.

16 I don't know what happened after that. I
17 don't know that it would change anything, honestly,
18 Counselor, because she clearly had a history of AML
19 which does increase his risk for developing AML also,
20 which I concede.

21 Q. And have you ever communicated with
22 Dr. Howard?

23 Have you ever consulted with her or had a
24 conference with her about his treatment or his
25 current condition?

1 **A. No.**

2 Q. So let's talk about briefly -- just kind of
3 moving on through the report. I guess Mr. Petty and
4 Dr. Herrick, correct?

5 **A. Yeah.**

6 Q. When did you first --

7 **A. Go ahead.**

8 Q. I'm sorry.

9 **A. No, no.**

10 Q. The lag is getting us again. When did you
11 first become aware of Dr. Herrick's involvement in
12 the case?

13 **A. I think that I was emailed his report about**
14 **two weeks ago, if I'm not mistaken. October**
15 **something-ish. 19th is sticking out in my head. So**
16 **it was recent.**

17 Q. All right. Have you worked on other cases
18 in which Dr. Herrick has been involved?

19 **A. I don't remember.**

20 Q. Have you worked on other cases in which
21 Mr. Petty has been involved?

22 **A. Yes.**

23 Q. Were those also cases litigated by
24 Mr. DuPont or another member of his firm?

25 **A. I don't know.**

1 Q. Have you ever spoken with Mr. Petty or
2 Dr. Herrick about this case?

3 A. No.

4 Q. Do you have any independent knowledge of the
5 basis or source of the information they gathered and
6 incorporated into their reports?

7 MR. DUPONT: Vague.

8 THE WITNESS: Only what would be in the report
9 as they describe it.

10 BY MR. JEFFRIES:

11 Q. Do you know whether they've ever evaluated
12 or considered any testing of the Kroil product with
13 respect to the benzene content?

14 MR. DUPONT: Compound, vague.

15 THE WITNESS: Whether they've done testing?

16 BY MR. JEFFRIES:

17 Q. Yes, sir.

18 A. In my experience with such experts, they
19 usually don't. They usually, you know, default to
20 Material Safety Data Sheets and other stuff that's in
21 the literature and in the compliance regulatory data
22 analyses. That's usually what happens. So I assume
23 that's what the case was here.

24 Q. If there was data associated with direct
25 testing of a product, would you expect them to review

1 that?

2 MR. DUPONT: Objection; vague, compound.

3 THE WITNESS: You know, I don't know. I mean,
4 you know, these things -- maybe I don't understand
5 your question exactly, but there is different lots
6 and everything, so you test things at different
7 times. And we know that things vary some in
8 industrial production.

9 So I think one usually goes by what's
10 documented per the EPA, or whatever the agency might
11 be.

12 Maybe you could ask the question differently
13 and I can help you better.

14 BY MR. JEFFRIES:

15 Q. Would you agree that it's a more accurate
16 source of information to assess the direct testing of
17 the product than to rely upon the estimations and
18 ranges contained in the Material Safety Data Sheet?

19 MR. DUPONT: Vague, compound.

20 THE WITNESS: No. No. Why would that be? I
21 don't.

22 BY MR. JEFFRIES:

23 Q. You don't think the direct testing of a
24 product --

25 MR. DUPONT: That's the second --

1 BY MR. JEFFRIES:

2 Q. -- over a period of time provides more
3 accurate and reliable information with respect to the
4 content of that product?

5 MR. DUPONT: I think he just answered that
6 question.

7 THE WITNESS: Let me give you an example,
8 Counselor. I bought a new car that we discussed on
9 Saturday, although I haven't received it. It's a
10 Hyundai Kona electric vehicle. And in doing my
11 research among the electric vehicles, one of the
12 things that I was concerned about was the range of
13 the car on a full charge.

14 And we test-drove the Nissan LEAF, which I
15 thought I had read had a very comparable range. And
16 it was a very comfortable car. It wasn't quite as
17 nicely appointed.

18 But then when I went back to what's
19 published and what's reported by the EPA, it reported
20 a 205-mile range, or something like that. You know,
21 I was reached out to by a Nissan salesperson whom I
22 hadn't actually met but I talked to on the phone, and
23 I texted him back that I had decided to go with one
24 of the Korean cars because of the range.

25 He said, Well, you know, we get 250 miles

1 per charge. And I said, Well, the EPA doesn't say
2 so.

3 He said, Well, I would like you to come test
4 the car and I will show you when you drive it that
5 the car will say it's charged to 250 miles.

6 I believe the EPA. I believe Consumer
7 Reports. You know what I'm saying?

8 And these guys --

9 BY MR. JEFFRIES:

10 Q. What if you bought the car and you actually
11 drove 250 miles on a charge? Would you believe your
12 own personal experience or would you believe the EPA?

13 MR. DUPONT: Vague.

14 THE WITNESS: Well, about that particular car
15 and that particular charge, maybe. But none of these
16 industrial hygienists are necessarily experts in
17 analytic chemistry.

18 You need to have analytic chemists do that.

19 So I think I basically just screwed your
20 premise. You might like my analogy or not.

21 But I didn't buy the Nissan.

22 BY MR. JEFFRIES:

23 Q. Is the most accurate information with
24 respect to the content of the product the actual
25 testing of the product itself versus estimation from

1 the use of the Material Safety Data Sheet?

2 MR. DUPONT: He's answered that several times
3 now. You're just trying to get him to change the
4 testimony. Asked and answered.

5 Move on.

6 BY MR. JEFFRIES:

7 Q. Doctor, go ahead and answer the question,
8 please.

9 MR. DUPONT: Asked and answered.

10 BY MR. JEFFRIES:

11 Q. Unless Mr. DuPont is your lawyer and he's
12 advising you not to answer, then you need to answer
13 the question.

14 MR. DUPONT: Nobody said -- the only question I
15 told him not to answer was when you referred to
16 people here in this country undocumented as illegals.
17 And if you do it again, we'll have a conversation --

18 MR. JEFFRIES: You're just telling him not to
19 answer that question and to move on, sir.

20 THE WITNESS: No, he didn't actually. But now
21 you're going to have to restate the question because
22 I don't remember it anymore.

23 BY MR. JEFFRIES:

24 Q. My question is, do you disagree with the
25 premise that the actual testing of the actual product

1 at issue is a more accurate assessment of the
2 product's contents than the estimations and
3 approximations that may be contained in the list of
4 ingredients in the Material Safety Data Sheet?

5 A. I'm going to have to ask you to clarify,
6 then, Counselor. Are you going to posit that Kryoil,
7 or whatever the hell oil it is, if that particular
8 can that he might have used 15 or 20 years ago had
9 been tested at that time, that that would be better
10 than knowing the range of content?

11 Yes, that would probably be better if each
12 can that he had ever used was assayed by itself in
13 real time; that probably would be better.

14 But I don't see how that's a feasible thing.

15 MR. JEFFRIES: Okay. Thank you.

16 Why don't we take a short break and I'll try
17 to streamline this as much as I can.

18 (Whereupon, a break was taken
19 from 12:47 p.m. until 12:51 p.m.)

20 BY MR. JEFFRIES:

21 Q. Doctor, looking through your report on page
22 5 and subparagraph 7, you make a reference to
23 "workers chronically exposed to benzene." How would
24 you define that term "chronically" in the context of
25 how you used it in your report?

1 A. Regularly for an ongoing period of time.

2 Q. Any specific period of time?

3 A. No.

4 Q. A month, a year, ten years, 20 years?

5 A. You know, most people in a particular
6 occupation continue what they are doing for many
7 years, several years. That's kind of what I was
8 referring to there.

9 Q. Okay. Flipping ahead a few pages to section
10 C, paragraphs 12 and 14 on pages 9 and 10.

11 A. Okay.

12 Q. I want to make sure I'm not misunderstanding
13 what you wrote in your report.

14 Do you customarily attempt to determine
15 causation in patients that you treat clinically?

16 A. At a very broad level, yes. I look for -- I
17 look for exposures which may have contributed to
18 leukemia, in part, because patients want to know.

19 So, yes, I do that routinely. I take a
20 social/occupational history on every patient.

21 Q. But do you attempt to determine a cause?

22 Are you able to determine a cause in most
23 patients?

24 A. Most patients know, but there are the
25 occasional patients with very worrisome histories,

1 either family or occupational or chemotherapy, and I
2 call that to the patient's attention, yes.

3 Q. But you said -- in paragraph 14 on page 10,
4 you say, "I have been unable to identify any of the
5 environmental factors that ultimately led to the
6 cancer."

7 And a couple of sentences later you say, "in
8 a handful of cases, based on the history, I have been
9 able to conclude, to a reasonable degree of medical
10 certainty, that the patient's occupational exposures
11 to carcinogens, such as benzene, contributed to the
12 development of their AML."

13 What percentage of those cases would you
14 estimate that you were able to conclusively determine
15 that causal relationship in the patients that you
16 treat clinically?

17 A. It's very rare. I would say over 30 years I
18 can think of -- are we talking now about benzene or
19 are we talking about all causes?

20 Q. Maybe you can tell me about both.

21 A. So a certain --

22 Q. Maybe let's start with benzene.

23 A. -- percentage of my patients smoke. And if
24 they have a long smoking history, I'll put that into
25 the causation column. And then I'll take into

1 account the history of obesity a little bit.

2 Family history is something we get quite
3 frequently. Chemotherapy we have in about 5 percent
4 of the patients.

5 But for people who have stories where it
6 seems like it's going to be chemically induced
7 throughout the occupational exposure, I suspect
8 there's probably been about ten over 30 years. But
9 that's a crazed, wild guess.

10 Q. Okay. I think you reference in your report
11 that you don't feel as a clinician you have any
12 obligation to do that, but you do that if you can put
13 the patient at ease or help you determine the best
14 treatment options, or something like that?

15 A. No, I do think I do have an obligation to do
16 that because I'm an academic physician and that's how
17 we generate hypotheses and learn about our diseases.

18 So I think it's absolutely incumbent upon us
19 to do that.

20 Q. And how many -- over your 30-year career,
21 how many patients do you think you've treated
22 clinically for AML?

23 A. Treated or that I've been personally
24 responsible for their longitudinal treatment?

25 Q. I'm not really sure I understand the

1 difference, but I'll let you explain it to me.

2 A. Because in an academic setting, I touch, at
3 some point, almost every patient with AML who is
4 managed by my team. In most places that I've worked,
5 there have been probably 50 or so new leukemics a
6 year, and because I touch almost every one of those
7 patients, you multiple 50 times 30, and I think that
8 comes out to 1,500.

9 Of those 50, potentially 20 of them will be
10 patients that I personally manage over time, or 15,
11 something like that. And so if you go 20 a year
12 times 30 years, that's 600.

13 Q. I guess what I was trying to get at, the
14 subset of -- you said an estimation of maybe ten
15 patients that you have been able to determine that
16 their occupational exposure to carcinogens such as
17 benzene contributed to their development of AML, that
18 subset of ten. And that's ten out of how many? Out
19 of 600?

20 MR. DUPONT: I think the term was wild guess,
21 not estimate.

22 THE WITNESS: Well, that's hard to say because
23 sometimes I discover these things when I'm talking to
24 somebody else's patient when I'm in the hospital
25 working with them.

1 I also hear about cases from other doctors.
2 It's just a guessing game that you're asking me to
3 play. I don't know.

4 BY MR. JEFFRIES:

5 Q. With regard to Mr. Rhyne's sister, are you
6 familiar with whether or not she was exposed to any
7 occupational petrochemicals or solvents?

8 A. I am not.

9 Q. Did you seek to obtain that information?

10 A. No.

11 Q. And you reference on page 12 of your report
12 these lists of contributing -- other syndromes and --
13 I think you called them cancer predisposition
14 syndrome?

15 A. Yep.

16 Q. Are these items that were tested for?

17 Are these -- what are these predisposition
18 syndromes?

19 MR. DUPONT: Objection; form.

20 THE WITNESS: These are the published known
21 familial syndromes as of the date of this report.
22 And they go along with certain leukemias that he
23 almost certainly didn't have.

24 BY MR. JEFFRIES:

25 Q. And I guess that was my question. Was there

1 any testing to determine he didn't have these?

2 A. No. They are clinical diagnoses that you
3 would know. The ones on the top -- the ones in the
4 top table are things that you would know if he had
5 before he had leukemia, and the ones in the bottom
6 are things that he would have been diagnosed with.

7 Q. Okay. And none of that was present in the
8 medical history that you reviewed?

9 MR. DUPONT: Form.

10 THE WITNESS: Correct.

11 BY MR. JEFFRIES:

12 Q. Doctor, looking at page 19 of your report
13 where you talk about the radiation. Were you made
14 aware of any scenario which Mr. Rhyne was exposed to
15 radiation contamination during his employment with
16 Duke Power?

17 A. I believe I saw the results of his dosimetry
18 reported, and that's all I remember, as we're sitting
19 here.

20 Q. Is that from the monitoring of the badge?

21 A. Yeah.

22 Q. You saw separate paperwork related to that?

23 I mean, you saw documentation of that
24 monitoring?

25 A. I think so. That was two years ago, so I

1 believe I did, yes.

2 Q. Just trying to move through my notes here,
3 so bear with me.

4 A. Sure.

5 Q. Looking in section 2, paragraph 28, of your
6 report, you discuss that in order to be -- in order
7 "to make the causation analysis meaningful, evidence
8 of exposure to the carcinogen in question must be
9 more than trivial, hypothetical, negligible or
10 theoretical."

11 Can you tell me how you would define those
12 terms in the context you were using them here in your
13 report?

14 A. Demonstrably above what everybody's ambient
15 exposure is.

16 Q. Okay. Is there any way to quantify that?
17 Like two standard deviations or, you know -- how do
18 you define "demonstrably"?

19 MR. DUPONT: Form.

20 THE WITNESS: Quacks like a duck.

21 BY MR. JEFFRIES:

22 Q. If it looks like it's more, then it must be
23 more, that kind of thing?

24 A. I would never suggest to a patient -- let's
25 say -- let's say, God forbid, I get acute leukemia,

1 which is possible. And I know that I stripped wood
2 in our old house in Baltimore and I did not use all
3 of the best practices that I might have used with the
4 paint stripper.

5 Q. Okay.

6 A. And my doctor asked me if I ever had any
7 chemicals exposure. I said, Well, there was this one
8 time that I spent about a week stripping this wood.
9 I can't exclude the fact -- the possibility that
10 the -- what's the -- something chloride, whatever the
11 thing is, they don't sell it anymore. Benzyl
12 chloride, I think it is, which is thought to be
13 carcinogenic. It is now removed.

14 I can't discount that that might have not
15 played a role, but it was a very brief exposure and I
16 don't have any other chemical exposures. So I'm not
17 going to say that it couldn't have anything to do
18 with it. But it was basically a one-time flash in
19 the pan. It probably didn't.

20 If I was doing paint stripping every day
21 over many months and I was not using a ventilator,
22 respiratory, gloves, that's a bit of a different
23 story.

24 Q. So the first example you gave would be
25 consistent with what you would refer to as a trivial

1 or negligible exposure?

2 A. Understanding that I don't exclude the
3 possibility that it was, in fact, causative. I'm not
4 going to make a case out of it because probably it
5 wasn't. But you never know.

6 Yes, it's not something that I would --

403/611
cumulative

7 Q. I understand.

8 A. Okay.

9 Q. Doctor, you suggest on paragraph 34 of your
10 report that you reviewed the records associated with
11 the treatment that Mr. Rhyne underwent here in North
12 Carolina?

13 A. Yes.

14 Q. And, again, I apologize if this has been
15 asked previously, but did you review all the records
16 associated with his treatment?

17 MR. DUPONT: Asked and answered.

18 THE WITNESS: No.

19 BY MR. JEFFRIES:

20 Q. And you have expressed an opinion here that
21 the charges for those treatments were reasonable and
22 appropriate. What is your basis for that opinion?

23 A. I scanned the charge history that was
24 provided to me looking for anything that looked out
25 of bounds, and everything looked completely consistent

1 with what I would expect in somebody being treated
2 for AML.

3 Q. When you say "everything," you mean
4 everything in terms of like the actual procedures
5 performed and the treatments administered?

6 MR. DUPONT: Form.

7 THE WITNESS: Yes. As well as the charges
8 associated with them.

9 BY MR. JEFFRIES:

10 Q. You told us earlier you never treated a
11 patient in North Carolina, correct?

12 A. That's correct.

13 Q. I assume you never issued a medical bill in
14 North Carolina, have you?

15 A. That's correct.

16 Q. You've never been responsible for billing
17 for medical services or setting rates for medical
18 services for any patient treated in North Carolina,
19 have you?

20 A. I have not.

21 MR. JEFFRIES: Doctor, thank you so much for
22 your patience. I think those are all of my
23 questions.

24 THE WITNESS: You're very welcome.
25

EXAMINATION

BY MR. DIXON:

Q. Doctor, this is Josh Dixon from Savogran. I just have a few questions.

A. I think our court reporter doesn't know doesn't know Stavogran. Can you spell that out for us?

Q. S-a-v-o-g-r-a-n.

A. Oh, Savogran. N, as in Nancy, or M, as in Maurie?

Q. N, as in Nancy.

A. Nancy. Savogran. That's not a very good name for a company. At first I thought it was like Stravomatic or something, or Spyrograph. I'm sorry.

Q. That's okay. Doctor, if you would please turn to page 14 of your report.

A. Sure. I'm there.

Q. The third sentence on that page says, "Kutzeit was known to contain around 50 percent benzene into the mid 1970s."

Do you see that?

A. Yes, I do.

Q. Where did you get that information?

A. That is a good question. I would have to go into my files to figure out where that was from. I

1 honestly don't remember where it is from.

2 But I like the name, Kutzit. It sounds like
3 a crazy toy or something. Kutzit.

4 Q. To your knowledge, have you done any studies
5 on Kutzit to determine the benzene content?

6 A. You know, I don't remember what I did two
7 years ago honestly, Counselor. I'm sorry. I haven't
8 recently.

9 Q. Have you ever previously had a case, to your
10 recollection, involving Kutzit?

11 A. I don't believe so. Like I say, I like
12 names, as you can tell, and I like to riff on names.
13 So Kutzit was one that I would probably remember, and
14 I don't remember Kutzit.

15 Q. You were asked this question by prior
16 counsel about a different product --

17 A. That's okay.

18 Q. -- but just to clarify, as to Kutzit, your
19 knowledge of Mr. Rhyne's use of Kutzit came
20 exclusively from his deposition; is that correct?

21 A. Yeah.

22 MR. DUPONT: Objection.

23 THE WITNESS: Well, from any of the depositions
24 that described his occupational use pattern, yes. I
25 have no other --

1 BY MR. DIXON:

2 Q. From any of the materials --

3 A. What's that?

4 Q. From any of the materials you were
5 provided -- that knowledge came only from the
6 materials you were provided --

7 A. Yes, I didn't go out and investigate his use
8 of Kutzit personally.

9 MR. DIXON: Okay. Thank you.

10 THE WITNESS: That wouldn't have "Kutzit."

11 That's it.

12 MR. DIXON: That's it.

13 THE WITNESS: You did "Kutzit."

14 Are there more? Any more people in that
15 box?

16 MR. DUPONT: Is that it from the defense?

17 EXAMINATION

18 BY MR. DUPONT:

19 Q. Just a couple clarifying questions.

20 Dr. Gore, you were asked by one attorney earlier in
21 your deposition whether Mr. Petty's report was your
22 only information on radiation exposures that
23 Mr. Rhyne may have had. But is it correct that
24 you've received dosimetry records and there is also a
25 summary of radiation exposure information that can be

1 determined from Dr. Herrick's report?

2 **A. Yes, that's true.**

3 Q. And similarly, just to clarify, in addition
4 to reviewing the fact witness testimony of Mr. Rhyne's
5 use of products, you've also received and have
6 available to rely upon Dr. Herrick's report that
7 provides information on how Mr. Rhyne used products
8 and what his benzene exposures were from those
9 products?

10 **A. That's correct.**

11 Q. That's true for the CRC products, Kroil
12 products and other products listed in Dr. Herrick's
13 report?

14 **A. Correct.**

15 Q. Sometimes industrial hygienists will express
16 a benzene exposure in a cumulative dose and sometimes
17 they don't. But just because there's no cumulative
18 dose given from a benzene exposure from a particular
19 product, that doesn't mean the person didn't have
20 exposure to benzene from their product; is that
21 right?

22 **A. If the product contains benzene --**

23 DEFENSE COUNSEL: Objection.

24 THE REPORTER: I'm sorry, is there somebody on
25 the phone that's saying something? I didn't hear any

1 objections.

2 DEFENSE COUNSEL: Object to the form of the
3 question, to all three questions thus far.

4 THE REPORTER: Thank you. Now I can hear you.

5 THE WITNESS: Say it again.

6 BY MR. DUPONT:

7 Q. If a person's cumulative dose of exposure to
8 benzene is not assessed, does that mean they're not
9 exposed to benzene from a product?

10 A. Of course not.

11 MR. DUPONT: All right. No more questions.

12 THE WITNESS: Going once.

13 MR. GRAY: That's a wrap.

14 MR. DUPONT: Do you want to read it and sign?

15 THE WITNESS: I prefer to. Last time I said
16 yes, I didn't get it.

17 MR. DUPONT: Yes. We would like to read and
18 sign.

19 THE WITNESS: Especially if it's in the big-
20 print version.

21 (AND FURTHER DEPONENT SAITH NOT AT 1:11 P.M.)
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

BRUCE RHYNE and JANICE)
RHYNE,)
 Plaintiffs,) Case No.:
 vs.) 3:18-cv-00197-RJC-DSC
UNITED STATES STEEL)
CORPORATION, et al.,)
 Defendants.)

This is to certify that I have read the transcript of my deposition taken on November 4, 2019, in the above-entitled cause by Roselind C. Pisano, CSR, consisting of Pages 1-158, inclusive, and that the foregoing transcript accurately states the questions asked and the answers given by me, with corrections, if any, appearing on the attached correction sheet(s).

_____ Correction sheet(s) attached
_____ No corrections have been submitted

STEVEN D. GORE, M.D.

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____ 20__.

Notary Public

Steven D. Gore, M.D.
November 4, 2019

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, Roselind C. Pisano, a Certified Shorthand
5 Reporter and Notary Public within and for the County
6 of Cook and State of Illinois, do hereby certify that
7 heretofore, to wit, on November 4, 2019, personally
8 appeared before me at The Blake Hotel, 9 High Street,
9 New Haven, Connecticut, STEVEN D. GORE, M.D., in a
10 cause now pending and undetermined in the United
11 States District Court, Western District of North
12 Carolina, Charlotte Division, wherein BRUCE RHYNE and
13 JANICE RHYNE are the Plaintiffs and UNITED STATES
14 STEEL CORPORATION, et al., are the Defendants.

15 I further certify that the taking of this
16 deposition was pursuant to Notice and that said
17 witness was first duly sworn to testify the truth,
18 the whole truth, and nothing but the truth, in the
19 cause aforesaid; that the testimony then given by
20 said witness was reported stenographically by me in
21 the presence of the said witness, and afterwards
22 reduced to typewriting by Computer-Aided
23 Transcription, and the foregoing is a true and
24 correct transcript of the testimony so given by said
25 witness as aforesaid.

Paszkievicz Court Reporting

(618) 307-9320 / Toll-Free (855) 595-3577

1 I further certify that the signature of the
2 witness to the foregoing deposition was reserved.

3 I further certify that my certificate annexed
4 hereto applies only to the transcript signed and
5 notarized by me and produced by me personally or
6 under my direction and control. The undersigned
7 assumes no responsibility for the accuracy of any
8 reproduced copies not made under my control or
9 direction.

10 I further certify that I am not counsel for nor
11 in any way related to the parties to this suit, nor
12 am I in any way interested in the outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto set my hand
14 and affixed my notarial seal this 14th day of
15 November 2019.

16
17
18 

19 _____
20 ROSELIND C. PISANO
21 Notary Public, Cook County, Illinois
22 Certified Shorthand Reporter
23 License No. 084-002031
24
25



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Exhibit 2

Transcript Report

Graeber, James

Plaintiffs designations are in yellow

US Steel's designations are in green

Transcript of Graeber, James

Full Transcript Report

Designation Legend

GRAEBER, JAMES - (COWEY) VOL 1

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01
02 CAUSE NO. A-167,693
03
04 JAMES COWEY AND RUTH) IN THE DISTRICT COURT
05 COWEY)
06)
07 PLAINTIFFS,)
08)
09 VS.) JEFFERSON COUNTY, TEXAS
10)
11 RADIATOR SPECIALTY)
12 COMPANY, ET AL)
13)
14 DEFENDANTS.)
15) 58TH JUDICIAL DISTRICT
16
17 *****
18
19 ORAL AND VIDEOTAPED DEPOSITION OF
20
21 JAMES GRAEBER
22
23 OCTOBER 31, 2003
24
25 *****
26 ORAL AND VIDEOTAPED DEPOSITION OF JAMES GRAEBER,
27 produced as a witness at the instance of the PLAINTIFFS,
28 and duly sworn, was taken in the above-styled and
29 numbered cause on the 31ST of OCTOBER, 2003, from 9:04
30 a.m. EST to 11:51 a.m. EST, before Mark A. Miller, CSR
31 in and for the State of Texas, reported by machine
32 shorthand, at the law offices of Nelson, Mullins, Riley
33 & Scarborough, 999 Peach Tree Street, Suite 1400,
34 Atlanta, Georgia, pursuant to the Texas Rules of Civil
35 Procedure and the provisions stated on the record or
36 attached hereto.
37 (Timestamping is in Central Standard Time)

Transcript of Graeber, James

Graeber, James

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01 A P P E A R A N C E S
02
03 FOR THE PLAINTIFFS:
04 MR. LANCE LUBEL
05 HEARD, ROBINS, CLOUD, LUBEL & GREENWOOD
06 910 TRAVIS STREET, SUITE 2020
07 HOUSTON, TEXAS 77002
08
09 FOR THE DEFENDANTS UNITED STATES STEEL CORPORATION,
10 ARISTECH CHEMICAL CORPORATION AND USX CORPORATION:
11 MS. LAURA CALLAWAY HART
12 NELSON, MULLINS, RILEY & SCARBOROUGH
13 1330 LADY STREET
14 COLUMBIA, SOUTH CAROLINA 29201
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16 FOR THE DEFENDANT RADIATOR SPECIALTY COMPANY:
17 MR. JAMES M. RILEY
18 COATS ROSE
19 1001 FANNIN, SUITE 800
20 HOUSTON, TEXAS 77002-6707
21
22 ALSO PRESENT:
23 MR. JOHN GROSSMAN
24
25
26
27
28
29
30
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34

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01 THE REPORTER: Would you like to take the
02 deposition by the rules?

03 MR. LUBEL: Yes.

04 THE REPORTER: Would you like for the
05 witness to read and sign his deposition?

06 MS. HART: Yes.

07 VIDEO OPERATOR: The time is 9:04 a.m.
08 We're on the record.

09 JAMES GRAEBER

10 was called as a witness by the Plaintiff, and being
11 first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. LUBEL:

14 Q. Would you please state your full name?

15 A. James Charles Graeber. And that's

16 G R A E B E R.

17 Q. Where do you live, Mr. Graeber?

18 A. I presently reside in Plainfield, Illinois,
19 which is southwest of Chicago.

20 Q. And are you retired?

21 A. Yes.

22 Q. And who did you work for before you retired?

23 A. You want the employment history?

24 Q. That would be great. If you want to -- I know
25 from looking at some of your prior depositions that

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JAMES - (COWEY)
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01 you've given that you went to college, correct?

02 A. That's correct.

03 Q. And then, why don't you tell us about your
04 educational background first, and then we'll go into
05 your work history.

06 A. I have a Bachelors of Science degree in
07 chemistry from St. Mary's University in Winona,
08 Minnesota. I have a Master of Science in organic
09 chemistry from Loyola University in Chicago.

10 Q. And did you do any significant work before you
11 got your college degree?

12 A. I began my -- well, which degree are you
13 speaking of?

14 Q. Let's start with just your -- your Bachelor of
15 Science in chemistry.

16 A. All right. I did labor work in the summertime
17 during that period.

18 Q. In an industrial setting or some other type of
19 setting?

20 A. For bricklayers, plasterers, that type of
21 thing.

22 Q. Okay. And then, I take it, then, you went to
23 college, correct?

24 A. I was going to college, and during the summer,
25 I would do that.

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01 Q. All right. Fair enough. (When was the first
02 time that you had a job that had any continuity to it?)

03 A. Before I completed my Masters degree, I went
04 to work at Sinclair Research Laboratories in Harvey,
05 Illinois.

06 Q. And what kind of business was Sinclair in?

07 A. They were an oil refiner, and they later got
08 absorbed by Atlantic Richfield.

09 Q. Is that -- is Atlantic Richfield what we in
10 Texas refer to as Arco, or is that a different company?

11 A. That would be the same one.

12 Q. All right. And do you recall whether or not
13 Sinclair had any operations in Texas; in particular, the
14 Houston area?

15 A. I believe they did, but I couldn't tell you
16 what they were.

17 Q. At any rate, when you started with them, that
18 was approximately what year? 1959?

19 A. 1950 -- I think it was '58.

20 Q. And how long did you work for Sinclair
21 Laboratories?

22 A. Approximately one year.

23 Q. And why did you leave there?

24 A. I wasn't satisfied with the research setting.
25 If I wanted to make a decision, I wanted to make a

Transcript of Graeber, James

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01 decision, not wait for a group of Ph.D.'s to tell me to
02 do what I wanted to do.)

03 Q. And is that part of the reason that you went
04 and got your Ph.D. in chemistry?)

05 A. I did not get a Ph.D.)

06 Q. You got a Masters?)

07 A. Masters.)

08 Q. All right.

09 A. I was getting it at the time.

10 Q. What type of research was Sinclair doing that
11 you were working on during that time period?

12 A. Catalyst research, and then I worked on
13 upscaling some processes that they were considering for
14 producing some chemicals.

15 Q. Now, were you aware back then when you were
16 working for Sinclair that they made a product called
17 benzene?

18 A. No.

19 Q. Did you later in time become aware of that?

20 A. I don't think Sinclair ever produced benzene
21 as a saleable material.

22 Q. Okay. But they were an oil refiner, correct?

23 A. That's correct.

24 Q. And do you understand, from your experience,
25 that oil refineries, there is actually benzene in crude

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01 oil as a component?

02 A. That's correct.

03 Q. And that the oil refiners, historically, did
04 their best to take the benzene out of the crude oil?

05 A. I wouldn't say that that's a totally correct
06 situation. They did in later years. But there were
07 times at which they did not worry about benzene as a
08 chemical. Certain refiners started to do this.

09 Originally, benzene was pretty much of a coal
10 chemical. As refiners progressed, they then started to
11 look at benzene, particularly when they started
12 reformers, which produced large volumes of toluene,
13 xylene and benzene along with it.

14 And when they had that large volume versus
15 what naturally occurred in crude oil, that's when they
16 looked at benzene. But I don't think Sinclair did that.
17 I was not aware of it, and I can't answer it any further
18 than that.

19 Q. Let me ask you this, you made a comment that
20 benzene was initially, or originally, I don't want to
21 put words in your mouth, but you said something about
22 that it was a coal chemical. What does that mean?

23 A. Derived from coal.

24 Q. And did that change?

25 A. No.

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01 Q. Okay. Did benzene at some point in time, was
02 it primarily produced from coal, and then over time, did
03 people or companies start to produce it out of crude
04 oil, is that what you're telling me?

05 A. Out of a crude oil refining process.

06 Q. All right. And when was this change made?

07 A. Okay. I can't tell you exactly when that
08 change -- it evolved.

09 Q. And why was it that a change was made where
10 people or companies went from taking benzene out of
11 coal, and started looking at taking it out of oil, crude
12 oil?

13 A. When markets presented themselves. You know,
14 what you're basically asking me is, when did plastics
15 start to come into prominence, which plastics, the ones
16 that would consume benzene, via additional processing,
17 and, for instance, you can make styrene out of benzene,
18 that type of an idea.

19 Q. I hear you. But when -- let's take that
20 example, you can make styrene out of benzene. Did the
21 benzene come from coal or from crude oil?

22 A. I don't know the timing on that. But the
23 original sources of benzene were -- was coal.

24 Q. And is benzene, to your knowledge, still
25 produced from coal even today?

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01 A. Indirectly.

02 Q. Is it produced from crude oil today?

03 A. Yes, through reforming.

04 Q. Through a refining process?

05 A. Yeah. It's an additional process. Reforming
06 originally was there strictly to upgrade the octane in
07 gasoline. And when you do this, you create toluene, you
08 create benzene, you create xylenes, and when that
09 occurs, and there is more profitability than gasoline,
10 then you look at those markets and start to produce
11 benzene. I mean, that's --

12 Q. And was there --

13 A. -- basically what occurred.

14 Q. Essentially, was there not enough coal to
15 produce benzene where the companies started looking at
16 other sources of it, and one of the sources they
17 identified was crude oil?

18 A. You know, I can't answer that, but --

19 Q. Let me --

20 A. -- it's possible.

21 Q. Let me ask you this, you left Sinclair
22 Research Laboratory in about 1959 or so; is that true?

23 A. Yes.

24 Q. Where did you go next?

25 A. To the Gary Works of U.S. Steel Corporation.

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01 Q. What do you mean by Gary Works?

02 A. That is a large plant, and that's the way they
03 referred to the different ones. There was a South
04 Chicago Works, Gary Works, Duquesne Works, plants.

05 Q. I got you. Who were you getting your paycheck
06 from at that time?

07 A. U.S. Steel Corporation.

08 Q. And you just happened to be working at their
09 Gary Works plant, which I heard you say was in Indiana,
10 correct?

11 A. Yes.

12 Q. And how long did you stay at that particular
13 plant?

14 A. I started on November 16th, 1959. And that's
15 easy because my birthday is the day before that. And it
16 was in December of '60 that I was transferred to
17 Pittsburgh, to the coal chemical sales division of U.S.
18 Steel Corporation.

19 Q. Let me kind of jump ahead. How long did you
20 work for United States Steel Corporation from beginning
21 to end?

22 A. That was until Aristech Chemical was formed,
23 and that was 1986, but I can't remember when in '86.

24 Q. All right. So, would it be fair to say that
25 from about 1959 through sometime roughly in 1986, you

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01 were an employee of United States Steel Corporation?

02 A. Correct.

03 Q. Now, you may have gone to different plants,
04 but you still got your paycheck from them, correct?

05 A. That's correct.

06 Q. Now, did you work continuously for United
07 States Steel Corporation between 1959 and 1986, other
08 than vacation and sick time?

09 A. Yes.

10 Q. Didn't work for anybody else, correct?

11 A. No.

12 Q. Now, do you understand that you've been
13 designated as a corporate representative, somebody to
14 speak on behalf of United States Steel Corporation?

15 A. Yes.

16 MS. HART: Object to form.

17 A. I believe that is correct.

18 Q. (BY MR. LUBEL) How did you learn that?

19 A. I really can't say that. I have been deposed,
20 as you mentioned before, and I believe it was in that
21 same basis, and it was, I guess, through conversations
22 with -- you got to give me your law firm, Nelson,
23 Mullins & Riley.

24 Q. You understand that law firm to represent
25 United States Steel Corporation?

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01 A. That is correct.

02 Q. Now, how did you learn about the deposition
03 that we're taking today?

04 THE WITNESS: Laura, I believe you
05 contacted me on that, and --

06 Q. (BY MR. LUBEL) U.S. Steel's lawyer called you
07 about giving the deposition?

08 THE WITNESS: If that's what I call
09 you -- if you're U.S. --

10 A. If Laura Hart is U.S. Steel Corporation's
11 lawyer, then the answer is yes.

12 Q. (BY MR. LUBEL) Okay. At any rate, do you
13 believe that you're here today to speak on behalf of the
14 company?

15 A. You know, really, I don't know how to answer
16 that question. Do I believe that I'm here to speak --

17 Q. Let me ask you this, you live in Illinois
18 right now, right?

19 A. That's correct.

20 Q. We're taking your deposition in Atlanta,
21 Georgia, correct?

22 A. Uh-huh.

23 Q. True?

24 A. Correct.

25 Q. How did you get here?

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Graeber, James

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01 A. I flew down yesterday morning.

02 Q. Who paid -- who is paying for your flight?

03 A. I don't know the mechanics of this, but it was
04 handled by Nelson, Mullins & Riley.

05 Q. And did they furnish you a ticket, are they
06 going to reimburse you for your ticket, or how is that
07 supposed to work, to your knowledge?

08 A. At my request, the ticket was furnished.

09 Q. At your request?

10 A. Yes.

11 Q. Now, did they put you in first class, or did
12 they make you sit in coach with the rest of the people?

13 A. Well, if you knew what type of airplane I was
14 on, there isn't much difference.

15 Q. Did they send you on the United States Steel
16 airplane?

17 A. No.

18 Q. At any rate, you were contacted by somebody to
19 come give a deposition on a U.S. Steel case, did you
20 understand that?

21 A. Yes.

22 Q. And you've come?

23 A. Correct.

24 Q. And I take it that you're not going to suffer
25 any out-of-pocket expenses by coming all this way from

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Graeber, James

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01 Illinois to Atlanta, correct?

02 A. I hope not.

03 Q. Do you have any agreement with the lawyers

04 that represent U.S. Steel, or U.S. Steel -- Steel

05 itself, as far as how you're going to be compensated for

06 your testimony?

07 A. Yes.

08 Q. What is that agreement?

09 A. Just verbal.

10 Q. I understand. But what's the -- what is

11 the -- what does it consist of? What did they tell you?

12 A. What did they tell me?

13 Q. What kind of deal did you work out, is what

14 I'm asking you?

15 A. Well, without giving you specifics, I have a

16 per diem charge and transportation and other valid

17 expenses would be covered.

18 Q. Okay. Do they pay you for your time, as far

19 as an hourly rate?

20 A. No. Daily.

21 Q. You get a daily rate?

22 A. That's correct.

23 Q. And what is that rate?

24 A. Do I have to answer that?

25 Q. Well, is there any particular reason why you

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01 don't want to tell this jury in Jefferson County, Texas,
02 how much U.S. Steel or their lawyers are paying you to
03 be here?

04 A. \$750.00 a day.

05 Q. All right. And that applies regardless of how
06 long you work, I take it?

07 A. That's correct.

08 Q. So whether this deposition lasts 30 minutes or
09 whether it lasts all day, you're going to get \$750.00?

10 A. That's correct.

11 Q. Plus incidentals, correct?

12 A. Plus valid expenses.

13 Q. And by that I mean if you buy a sandwich for
14 lunch, they're going to pay you back, that's your
15 agreement?

16 A. Correct.

17 Q. And they're going to pay for your airplane
18 ticket, true?

19 A. They did.

20 Q. They already did. You got here last night,
21 they put you up in a hotel, right?

22 A. Correct.

23 Q. You didn't have to pay for that yourself, did
24 you?

25 A. No.

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01 Q. How long have you had this type of agreement
02 with U.S. Steel or their attorney?

03 A. Well, this is the first time I -- excuse me --
04 I have traveled away from Illinois, out of the Chicago
05 area, so they're picking up expenses, other than
06 parking, which, in Illinois, there was no real charges
07 involved.

08 Q. But you got paid for your time, correct?

09 A. Correct.

10 Q. But you didn't have to get in an airplane is
11 what you're saying?

12 A. That's correct.

13 Q. You didn't have to stay in a hotel?

14 A. Correct.

15 Q. But how long have you had this agreement with
16 U.S. Steel that you would appear on their behalf to give
17 testimony for a fee?

18 A. It has not been a general agreement. It has
19 been when I've been contacted that my services would be
20 desired or needed.

21 Q. All right. Now, do you have any type of
22 pension from your work with United States Steel
23 Corporation?

24 A. That was taken as a lump sum upon retirement.

25 Q. All right. You had the option of taking that

Transcript of Graeber, James

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01 money on a monthly basis over time or getting it all at
02 once, and you chose to take it all at once?

03 A. Correct.

04 Q. Do you own any stock?

05 MR. RILEY: Excuse me.

06 MR. LUBEL: That's not me. Riley, is
07 that your daughter's phone?

08 MR. RILEY: I apologize.

09 MR. LUBEL: That's all right. It's a
10 good break.

11 Q. (BY MR. LUBEL) Are you ready to proceed?

12 A. Sure.

13 Q. My question is, do you own any stock in United
14 States Steel Corporation or any successor to it?

15 A. No.

16 MR. LUBEL: Do you have an exhibit
17 sticker there, Mr. Miller?

18 (Exhibit 1 marked.)

19 Q. (BY MR. LUBEL) How many depositions have you
20 given for U.S. Steel?

21 A. Four, but one was in creosote.

22 Q. So the one for creosote and then three for the
23 raffinate Liquid Wrench cases?

24 A. That's correct.

25 Q. Would this be the fourth Liquid Wrench

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01 raffinate case?

02 A. Yes, it would be

03 Q. And have you done any consulting for United
04 States Steel Corporation about the cases, apart from
05 giving testimony; in other words, sitting here and
06 having to ask -- answer questions, you know, with a
07 videographer and a court reporter?

08 A. Nothing that was not connected to a
09 deposition.

10 Q. And by that, what I mean is, since your
11 employment with United States Steel Corporation in 1986,
12 have they asked you to consult with the company on any
13 work they were doing, apart from defending lawsuits?

14 A. No.

15 Q. Now, let's go back to the lawsuits. You got
16 in, for instance, last night to come here this morning,
17 correct?

18 A. I got in around noon time.

19 Q. Did you have a chance to meet with U.S.
20 Steel's lawyers?

21 A. Correct.

22 Q. Did you talk to them about the case?

23 A. Correct.

24 Q. How long did you meet with them yesterday?

25 A. Oh, I'd say overall about three hours.

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01 Q. All right. Now, did you review any documents
02 as you talked to them, or did they read from any
03 documents to you?

04 A. We looked at documents.

05 Q. What type of documents did you look at?

06 A. It would be -- you have to wait a minute while
07 I think back.

08 Q. Take your time.

09 A. Well, one was the deposition, or a deposition
10 that I took part in, and I forget the year, concerning
11 benzene and Liquid Wrench.

12 Q. Did you bring that here, or did they show it
13 to you?

14 A. It was shown to me.

15 Q. And did they tell you that the reason they
16 were showing it to you is so that any statements you
17 made today were not inconsistent with it?

18 MS. HART: Object, privilege. You're
19 asking about our conversations now.

20 MR. LUBEL: I'll honor the privilege if
21 you're saying that he's the client.

22 MS. HART: Well, I mean, he's speaking
23 for U.S. Steel, you may not understand that, but he is
24 the designated corporate representative on certain
25 topics that are noticed in the -- in the Deposition

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01 Notice. So, in that sense, he's U.S. Steel. But, you
02 know, he's retired, so he's not U.S. Steel, you know, in
03 the legal sense.

04 Q. (BY MR. LUBEL) Do you understand now from
05 listening to your lawyer that you are, in fact, a
06 corporate spokesperson for United States Steel
07 Corporation?

08 A. After hearing that, yes.

09 Q. All right. Now, was there anything
10 confidential that was discussed between you and the
11 lawyers for United States Steel Corporation when you met
12 yesterday to get ready for the deposition?

13 A. What do you mean by "confidential"?

14 Q. Was there anything discussed in your meeting
15 that you felt as though was in anticipation of
16 litigation, or preparing for litigation, that you felt
17 as though was something that should not be disclosed to
18 third parties, such as the jury in this lawsuit?

19 MS. HART: Objection, form.

20 A. I don't believe there was anything of that
21 nature.

22 Q. (BY MR. LUBEL) At any rate, the lawyers
23 provided you one of your older depositions to look at,
24 correct?

25 A. Correct.

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01 Q. And you-all went through it?
02 A. No. I had it to look through.
03 Q. They gave it to you to take home?
04 A. Yeah.
05 Q. To look at last night?
06 A. Yes.
07 Q. What else did you look at other than that?
08 A. Oh, I've got one thing right in front of me,
09 Typical Analysis of Clairton Raffinate.
10 Q. But other than the documents that are sitting
11 in front you, is there anything else that you looked at?
12 And I understand you looked at the deposition.
13 A. There were more voluminous pieces of paper
14 than this, but they were all on this same type of a
15 subject.
16 Q. Had you seen them before, or were they new to
17 you?
18 A. Most I had seen before.
19 Q. Now, were you ever asked to go search for
20 documents that any of the parties in the lawsuit had
21 requested from United States Steel Corporation?
22 A. No, because I would have no way of doing it.
23 Q. But at any time during your employment, were
24 you asked to maintain files on benzene or raffinate or
25 any of those subjects?

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01 A. No.

02 Q. Why not?

03 A. Because we never kept personal files. If
04 correspondence went out, it was put into a central file
05 system, copies were. If you wanted to keep a copy, you
06 could keep a copy. But after awhile it gets voluminous
07 enough that you get rid of them.

08 Q. And how did you get rid of them?

09 A. Wastebasket.

10 Q. All right. But how did you make sure that the
11 copy went to the central files, or that the original
12 went to the central file?

13 A. Just designated one to go.

14 Q. But give me the mechanics of how that document
15 would get from your office to these central files.

16 A. The central file was in the office. I'm going
17 back originally to coal chemical sales and then USS
18 Chemicals, which evolved from coal chemical sales and
19 Pittsburgh Chemical.

20 Q. In Pittsburgh, Pennsylvania?

21 A. Pardon me?

22 Q. In Pittsburgh, Pennsylvania?

23 A. Correct.

24 Q. Was that the headquarters of United States
25 Steel Corporation?

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01 A. Yes, it was. And then after Aristech was
02 formed, they just followed through with the same
03 situation.

04 Q. Did Aristech take over the same facilities,
05 actual buildings, structures and property that United
06 States Steel Corporation had?

07 MS. HART: Objection, beyond the scope of
08 this deposition.

09 A. You're asking me a question that I really
10 can't comprehend because of -- Aristech took over
11 chemical producing facilities that were spelled out in
12 the agreement for the formation of Aristech Chemical.

13 Q. (BY MR. LUBEL) Did you ever see that
14 agreement?

15 A. No.

16 Q. Has anybody ever talked to you about the
17 substance of that agreement?

18 A. Oh, in general, we were told what it was, but
19 I -- the agreement had to be monstrous in volume.

20 Q. Why is that? Why do you say that?

21 A. Well, Aristech was a stock corporation created
22 by USX Corporation, and they divested themselves of all
23 money in that corporation when they put it on the New
24 York Stock Exchange.

25 Q. Well, the reason I'm asking you questions

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01 about this, is because you made a comment about the
02 central files that existed in the Pittsburgh,
03 Pennsylvania headquarters of United States Steel
04 Corporation, when it became Aristech, it was the same
05 central file, did you say that?

06 A. Well, files that were passed on. Now, I have
07 no idea what they might have discarded, and I have very
08 little knowledge of anything that was saved.

09 Q. You don't know either way on that, right?

10 A. No.

11 Q. But was it in the same building, is my
12 question?

13 A. Correct.

14 Q. So, when Aristech took over the headquarters,
15 they officed in the same building?

16 A. Correct.

17 Q. Were the same people working there?

18 A. Not exactly.

19 Q. Well, was there much overlap?

20 A. No.

21 Q. There was not much overlap?

22 A. Between U.S. Steel and --

23 Q. Aristech.

24 A. -- Aristech? No. It was a clean-cut
25 severance.

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01 Q. All right.

02 A. Because you were basically saying that USS
03 Chemicals, division of U.S. Steel Corporation, became
04 Aristech Chemical Corporation.

05 Q. But you kept your job there, right?

06 A. Correct.

07 Q. Same office?

08 A. They moved the offices within the same
09 building.

10 Q. Did you have a different boss?

11 A. No.

12 Q. Who was your boss at the time of the change?

13 A. Jay Windfelder. J.J. Windfelder.

14 Q. What was his title?

15 A. General manager of coal chemicals.

16 Q. Did the people within your group of the coal
17 chemicals stay essentially the same when the changeover
18 occurred from the United States Steel Corporation to
19 Aristech?

20 A. Yes.

21 Q. You-all may have moved your offices within the
22 building, but you were in the same structure?

23 A. Correct.

24 Q. And now, once that change was made, your
25 paycheck would say Aristech on it instead of United

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01 States Steel Corporation, I take it?

02 A. I believe that's the way.

03 Q. All right. Did you ever get a paycheck from a
04 company called USX?

05 A. I'm having trouble recalling, but I think that
06 prior to Aristech, it came through USS Chemicals,
07 division of USX.

08 Q. What is your understanding and belief as to
09 when USX started to have a relationship with United
10 States Steel Corporation, otherwise known as USS
11 Chemicals?

12 MS. HART: Object to form.

13 Q. (BY MR. LUBEL) When did USX become involved?

14 A. USX was formed at some point after Marathon
15 Oil was acquired, and USS Chemicals had been, prior to
16 that, a division of U.S. Steel Corporation.

17 Q. All right. But I'm talking about USX.

18 A. I know. USX was formed, and I can't tell you
19 when exactly.

20 Q. Approximately? Can you give me an approximate
21 decade?

22 MS. HART: Listen, this is beyond the
23 scope of discovery. We've objected to this. It's in
24 our written objections, which I'd like to make an
25 exhibit to this deposition. He's not designated as a

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01 spokesperson on the various corporate structures.

02 He's not speaking for the corporation on the
03 various corporate structures. You're asking him
04 questions about his personal paycheck, and I was letting
05 you ask him about that. But he -- he never worked in
06 that area, and he just knows from being an employee.

07 MR. LUBEL: Right. I think if you look
08 at that Deposition Notice close, we -- we said that
09 we're going to take these guys not only in their
10 corporate representative capacity, but also in their
11 individual capacity. So --

12 MS. HART: I don't -- I don't remember
13 that from the Notice. Perhaps I'm wrong. But I don't
14 remember that from the Notice. And that's why -- you
15 know, I don't mind you asking him some questions about
16 his personal thing, you have to understand how this
17 comes out, but he is not the designated corporate
18 spokesperson on the corporate entities --

19 MR. LUBEL: Who is going to do it?

20 MS. HART: Well, we've objected to that
21 because it's all irrelevant to this case. The relevant
22 time period ended in 1978 with the last sales of
23 raffinate --

24 MR. LUBEL: Well, who's liable?

25 MS. HART: -- to Radiator Specialty.

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01 MR. LUBEL: Who's --

02 MS. HART: United States Steel

03 Corporation, we've told you that several times in the
04 course of all of this. United States Steel Corporation.

05 And, you know --

06 MR. LUBEL: All right. Maybe I can cut
07 this short. If the plaintiffs in this case go down and
08 get a judgment in their favor, you're saying that United
09 States Steel Corporation is liable for that judgment?

10 MS. HART: If there is a judgment in this
11 case against the entity that sold raffinate, the
12 successor entity, that would be United States Steel
13 Corporation, yes.

14 Q. (BY MR. LUBEL) Well, let me ask you this,
15 Mr. Graeber, which company sold the raffinate during the
16 time you worked there?

17 A. I'm trying to get back in my mind in the
18 history timing. If raffinate was sold prior to 1964, it
19 would have been through the coal chemical sales division
20 of U.S. Steel Corporation.

21 Q. United States Steel Corporation?

22 A. Of United States Steel.

23 Q. All right. Post '64, raffinate sales, through
24 '78, which company sold raffinate?

25 A. It would have been USS Chemicals Corporation,

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01 which I believe --

02 MS. HART: No.

03 THE WITNESS: Am I in the wrong here?

04 MR. LUBEL: Do you-all want to take a
05 break? I just want to get this straight. That's what I
06 need to get straight.

07 MS. HART: Yeah, let's take a break.
08 Let's talk, and I think maybe we can straighten this
09 out.

10 MR. LUBEL: I understand. I'm going to
11 need something on the record from somebody --

12 MS. HART: Right.

13 MR. LUBEL: -- that clears this up for
14 me. I don't care if it's him, but --

15 MS. HART: I can clear it up for you.

16 MR. LUBEL: Great. Go ahead.

17 THE REPORTER: Are we off or on?

18 MR. LUBEL: We can go off the videotape.

19 VIDEO OPERATOR: The time is 9:39 a.m.,
20 and we're off the video record.

21 THE REPORTER: Do you want it on, on
22 this?

23 MR. LUBEL: Let's hear the -- let's go
24 off the record.

25 (A break was taken from 9:39 to 9:41.)

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01 MR. LUBEL: Make your stipulation on the
02 record. We'll use that.

03 MS. HART: United States Steel
04 Corporation stipulates that the sales of raffinate to
05 Radiator Specialty Company were made through 1978 by USS
06 Chemicals division of United States Steel Corporation.
07 And there were no sales after 1978 that we are aware of.

08 VIDEO OPERATOR: The time is 9:41 a.m.,
09 and we're on the video record.

10 Q. (BY MR. LUBEL) Are you ready to proceed?

11 A. Yes, I am.

12 Q. Mr. Graeber, isn't it true that when you
13 started at United States Steel Corporation in roughly
14 1960, or sometime shortly thereafter, you learned that,
15 in fact, your company had supplied Radiator Specialty
16 Company with raffinate before you ever started working
17 there?

18 A. I never learned that. What I did learn at
19 some point, and I can't really tell you when that was,
20 that USS -- that we were supplying raffinate to Radiator
21 Specialty, but I cannot tell you what year.

22 Q. Do you recall giving testimony that's
23 different than what you're telling us right now?

24 A. No.

25 Q. Okay. Have you been supplied with the

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01 deposition that you gave in the Melvin Rector and Helen
02 Rector case, on November 2nd of 2000, where it was an
03 oral and videotaped deposition where you were under oath
04 just like you are here today? Do you remember that?

05 A. Not all of it.

06 Q. Do you remember giving a deposition under oath
07 in that case?

08 A. Yes.

09 Q. And see if on page 39, you'll go ahead and
10 read lines three through seven first, just the
11 paragraph, the question that was asked to you.

12 A. Do you want me to read it out loud?

13 Q. Yes, sir, please. Three through seven.

14 A. "Question: Okay. In 1960, when you went to
15 work at United States Steel or shortly after, you became
16 aware that Radiator Specialty, Incorporated had been
17 buying raffinate from United States Steel even before
18 you went to work in 1960?"

19 Q. And read for us your answer you gave in that
20 testimony. If you go down you'll see an answer.

21 MS. HART: Objection. There was an
22 objection he skipped over.

23 Q. (BY MR. LUBEL) Read your answer, sir.

24 A. I'm trying to get to it. "I believe that is
25 correct, but I'm not sure of that."

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01 Q. What was the next question that was asked of
02 you right after that?

03 A. "But that's what you've testified to? Yeah."

04 Q. And, in fact, what the lawyer was asking you
05 there in another deposition that you gave, I believe in
06 the Lennon case, you had testified that, in fact, you
07 had learned that U.S. Steel Corporation was supplying
08 Radiator Specialty Company with raffinate before you
09 started in 1960, correct?

10 MS. HART: Objection, form.

11 A. I don't know if you've got something that I
12 can read -- obviously, I must have said it because it
13 was recorded. But on the other hand, I'm talking to you
14 with the best of my recollection at this time.

15 Q. (BY MR. LUBEL) Okay. Let me ask you this,
16 was your recollection, in November of 2000, do you think
17 it was better than you have today?

18 A. It might have been.

19 Q. So, to the extent, in November of 2000, you
20 believed that it was correct that, in fact, U.S. Steel
21 had been supplying Radiator Specialty Company with
22 raffinate before you started working there in 1960 --

23 A. I think if you read through my original answer
24 there, there is a guarded situation where I'm saying I
25 think.

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01 Q. You did. You said, "I believe that is
02 correct, but I'm not sure of that."

03 A. Yes.

04 Q. I want to be fair with you. I'm not trying to
05 put words in your mouth.

06 A. No, but that's the way I answered it, and that
07 says, basically, to the best of my knowledge, that's it,
08 but it's not necessarily a fact.

09 Q. But you weren't guessing -- I mean, you knew
10 not to just guess at questions, correct?

11 A. That isn't a guess. It's a statement of some
12 doubt.

13 Q. But you understood the seriousness of giving
14 testimony under oath, didn't you?

15 A. Correct.

16 Q. And you understand that today?

17 A. Yes.

18 Q. So -- and I take it that you were advised by
19 somebody not to speculate or give guesses about answers
20 to questions; is that true?

21 A. Yes.

22 Q. So, when you testified that you thought that
23 was correct, but you weren't sure, you felt as though
24 that was, in fact, true?

25 A. Say that again.

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01 Q. In November of 2000, when you gave your
02 testimony under oath, just like you're doing here today,
03 you believed that before you started at U.S. Steel in
04 about 1960, that there had been a relationship between
05 Radiator Specialty Company and U.S. Steel regarding the
06 sale of raffinate, is that what you said?

07 A. No, I don't believe that's what I said.
08 Somebody else said that, and I guardedly concurred.

09 Q. You said, I believe that's correct, but I'm
10 not sure of that.

11 A. Yeah.

12 Q. Why did you say you believe that is correct?

13 A. I believed it was correct, but I wasn't sure.

14 Q. I know, but why, why did you believe it was
15 correct?

16 A. I probably answered the question incorrectly.

17 Q. Why do you say that now?

18 A. Because with the way you're speaking with me,
19 I should have said I don't know.

20 Q. Well, look, isn't it true, Mr. Graeber, that
21 United States Steel, that their only customer of
22 raffinate was Radiator Specialty company?

23 MS. HART: Objection, form.

24 Q. (BY MR. LUBEL) Is that true or not?

25 A. I cannot tell you that 100 percent. I can

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01 only tell you what I think is correct.

02 Q. Tell me what your understanding of that was.

03 A. To the best of my recollection, raffinate was
04 only sold to Radiator Specialty.

05 Q. Why do you say that?

06 A. Up until 1978.

07 Q. Why do you say that?

08 A. Because I was unaware of raffinate being sold
09 to anybody else. I myself was unaware.

10 Q. Well, didn't you believe that the raffinate
11 that existed at U.S. Steel before 1960, before you
12 started working there, was sold to Radiator Specialty
13 Company before you started working for U.S. Steel,
14 because Radiator Specialty Company, at least you were
15 told by your supervisors, was the only customer of that
16 product?

17 MS. HART: Objection, form.

18 A. I didn't learn that until after 1960. I
19 started in Pittsburgh in December of '60.

20 Q. (BY MR. LUBEL) I understand that. But you
21 knew that raffinate was a product at U.S. Steel
22 Corporation shortly after you started working there in
23 1960, correct?

24 A. It would have been mid-'61 before I got to
25 that point. It was not a major product, it was a

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01 by-product.

02 Q. I understand that. But at any rate, at some
03 point in time, whether it be the late '60s or the early
04 '61 time period, you learned that raffinate was a
05 product of the company?

06 MS. HART: Objection, form.

07 A. I had to, yes.

08 Q. (BY MR. LUBEL) And you knew it was not a
09 product that just started being made when you started
10 working there in '61, correct?

11 A. I don't know when the benzene refining unit
12 went on stream, but raffinate was produced after the
13 benzene refining facility went into operation. What
14 that date was, what year, I cannot answer it.

15 Q. Have you given testimony under oath before
16 today that United States Steel Corporation started
17 making raffinate at the Clairton plant?

18 A. Clairton?

19 Q. Clairton plant in 1955? Do you remember
20 saying that under oath?

21 A. I could have. I don't remember exactly.

22 Q. Let me see if I can refresh your recollection
23 with that. I'm going to read from the same deposition
24 we went through in the Rector case. I'm going to read
25 the question to you.

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01 "United States Steel manufactured the
02 raffinate at the Clairton plant, and you don't know when
03 they started manufacturing the material; is that
04 correct?" And would you read your answer starting on
05 lines 9 through 21?

06 A. Well, which was the question?

07 MS. HART: I think you meant 19.

08 Q. (BY MR. LUBEL) 19 through 21.

09 A. 19.

10 Q. I apologize.

11 A. "No, I believe I can say that when the plant
12 started up raffinate began to appear, and that would
13 have been, if I'm not mistaken, 1955."

14 Q. So, in fact, you believed, at least when you
15 gave that deposition in November of 2000, that that
16 plant of U.S. Steel, the Claremont (sic) plant started
17 making raffinate as early as 1955?

18 A. At that time I believe it began operation in
19 1955. On the other hand, I could have been wrong about
20 when it started up. I was not there. I wasn't even
21 working for U.S. Steel Corporation in 1955. I hadn't
22 even graduated with a Bachelors degree in 1955.

23 Q. I understand. But when you started working
24 there in roughly 1960, there were people that were
25 working there that had been there before you had?

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01 A. Correct.

02 Q. And you learned the history of the company
03 based upon talking to people that had worked there?

04 A. Yes. But it's possible I confused the date.

05 Q. Okay. Well, look, I agree with you, it's
06 possible everything you've said in-between today's
07 deposition and the prior testimony you've given is
08 completely confusion and wrong. I'll grant you that.

09 But was it your belief when you gave that
10 testimony in November of 2000, that that was an accurate
11 statement, that, in fact, raffinate was on-line at the
12 Claremont U.S. Steel facility in 1955?

13 A. Clairton.

14 Q. Clairton. Do you agree with that?

15 A. It was my belief it started in 1955.

16 Q. Thank you. Now, what is your understanding as
17 to why United States Steel Corporation manufactured
18 raffinate? We know they wanted to make money, but what
19 is the technical explanation?

20 A. Raffinate was a by-product of a Udex
21 extraction, which is separation of aromatics from
22 nonaromatics in an organic chemical stream. The
23 nonaromatics are what is called the raffinate in the
24 Udex process. And by nature, you cannot extract all of
25 the aromatic materials, but you strive to do the best

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01 job possible. Raffinate is a naturally occurring
02 material.

03 Q. Raffinate is?

04 A. In this system.

05 Q. In the process?

06 A. Yeah.

07 Q. So, it was a by-product, and it was something
08 that United States Steel Corporation could sell for a
09 profit, true?

10 A. It was something that U.S. Steel Corporation
11 strived to sell for a profit.

12 Q. Well, I mean, you know enough about the
13 company to make a statement that United States Steel
14 Corporation would not have been in the raffinate
15 business for almost 30 years if they couldn't make money
16 doing it; is that true?

17 MS. HART: Object to form.

18 A. There was no choice raffinate occurred, you
19 either burn it or sell it, and they were not really
20 equipped to burn.

21 Q. (BY MR. LUBEL) So, they had to get rid of it
22 some way, and they chose to sell it?

23 A. That's correct.

24 Q. True?

25 A. Yes.

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Continuing
Objection

01 Q. And they chose to sell it to Radiator
02 Specialty Company?

03 A. Correct.

04 Q. And you're not aware of any other customers
05 that bought this raffinate that contained benzene,
06 correct?

07 A. Raffinate as raffinate, correct.

08 Q. But the raffinate from United States Steel
09 Corporation contained benzene, true?

10 A. Normally, it did.

11 Q. Now, the amounts may have varied, and I've
12 seen you have given testimony on that before, but there
13 was benzene in it, true?

14 A. Correct.

15 Q. And as I appreciate it, it's your belief that
16 the concentration of benzene in the raffinate varied
17 somewhere between one percent and 14 percent, is that an
18 accurate statement?

19 A. I think so.

20 Q. And you've seen the -- you've seen the
21 documentation from U.S. Steel where their chemists, in
22 fact, said that the minimum concentration of benzene in
23 the raffinate, the minimum amount was five percent,
24 you've seen that document in depositions, correct?

25 A. Correct.

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01 Q. And I think that you're aware that United
02 States Steel Corporation, they actually measured the
03 concentration of benzene in the raffinate on at least a
04 daily basis?

05 A. That is correct. When the Udex Unit was
06 running, and it's done basically to know that you're
07 operating as best you can, because the desired amount of
08 benzene in raffinate is zero.

09 Q. But you can't get there?

10 A. That's correct.

11 Q. So -- but at any rate, my point is, U.S. Steel
12 knew every single day that they produced raffinate that
13 there was some component of benzene in it?

14 A. That the component of benzene was present.

15 Q. In the raffinate?

16 A. Yes.

17 Q. So, there is no doubt in your mind that when
18 United States Steel Corporation was selling the
19 raffinate to Radiator Specialty Company, that the
20 company knew that there was benzene in the product?

21 A. Correct.

22 Q. And that benzene would vary between one
23 percent and 14 percent?

24 A. Yes. I'll answer it that way.

25 Q. Now, to your knowledge, did United States

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01 Steel Corporation, did they provide these daily
02 measurements of the benzene concentrations to Radiator
03 Specialty Company, so that they would know whether the
04 percentage was one percent or two percent or three
05 percent or on the high side of 14 percent?

06 A. No, we did not do that on a routine basis.

07 Q. How often did you tell Radiator Specialty
08 Company how much benzene there was?

09 A. Whenever they inquired.

10 Q. And how many times did you talk to them about
11 it?

12 A. Once, maybe twice.

13 Q. Who did you speak to about it?

14 A. I think there is a name in correspondence in
15 here.

16 Q. The chief chemist for Radiator Specialty
17 Company?

18 A. I believe so.

19 Q. Mr. Kologiski?

20 A. Yeah.

21 Q. Mr. K.?

22 A. Okay.

23 Q. Just because we can't pronounce it.

24 A. Okay.

25 Q. Whatever his name was at Radiator Specialty

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01 Company, that's who you spoke to once or twice?

02 A. I've spoke to another person, too, Theobaldo
03 Tames or something.

04 Q. What, was he a chemist, too, to your
05 knowledge?

06 A. I think so.

07 Q. Can you count on your hands the number of
08 conversations you had with anybody at Radiator Specialty
09 Company?

10 A. Well --

11 Q. One or two, two or three?

12 A. I guess three.

13 Q. And was, generally, the substance of those
14 conversations about measurements you-all had made about
15 what was in the raffinate, was that generally what they
16 were about?

17 A. I was asked, I believe, what is the benzene
18 concentration in raffinate, and what I did was have
19 these daily production logs reviewed, oh, let's say over
20 a two-month period, but I can't tell you exactly what it
21 was, so that I wasn't given a single analysis. And then
22 had people average them and then take the out high --
23 years on the high and the low side, and that's how that
24 data was formed, from production logs.

25 Q. But can you remember the substance of your

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01 conversation with these men from Radiator Specialty
02 Company, do you remember talking about anything else
03 other than the fact that there was benzene in the
04 raffinate and what the percentage was during that
05 period?

06 A. Not that I know of.

07 Q. All right. Well, did you volunteer to
08 Radiator Specialty Company that it was a poison?

09 A. No.

10 Q. Did you tell Radiator Specialty Company that
11 it could harm the blood or the blood-forming organs of
12 people that were exposed to it?

13 A. No.

14 Q. Did you tell them that it can cause cancer?

15 A. No.

16 Q. Did they ask you any of those questions?

17 A. Not really. They asked, I believe, because
18 of -- of fear, that benzene would cause some illness,
19 but I don't think at that time it was known what benzene
20 caused.

21 Q. What time are you talking about?

22 MS. HART: Objection, form.

23 Q. (BY MR. LUBEL) What time are you talking
24 about?

25 A. 1967, '68.

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01 Q. So you don't --

02 A. Somewhere in that area.

03 Q. All right. In that area, you do not believe
04 that the industry knew what benzene could do to people?

05 A. I do not believe that they had facts
06 assembled, enough data put together that any kind of a
07 conclusion could have been formed as to what maximum
08 exposure to benzene should be set.

09 Q. If they did know, they didn't tell you?

10 A. That's correct. But I don't know who it was
11 that would have told me. The government was looking at
12 it. Industry was looking at it.

13 Q. Well, let me ask you this --

14 MR. RILEY: Objection, form.

15 Q. (BY MR. LUBEL) -- during this time period of
16 '67 and '68, we'll call it the late '60s, if you will,
17 did U.S. Steel Corporation have medical personnel that
18 worked at the company?

19 A. Yes, they did.

20 Q. They had a medical department, correct?

21 A. Correct.

22 Q. They had industrial hygienists, correct?

23 A. I'm not positive, but I believe so.

24 Q. Okay. And did -- do you understand that
25 industrial hygienists, that their job is to identify,

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01 evaluate and control hazards in the workplace?

02 A. I don't know if I know what their job
03 description was or what their particular duties were.

04 Q. All right.

05 A. And the reason I say that is because this was
06 United States Steel Corporation.

07 Q. The only point I'm trying to make,
08 Mr. Graeber, is that when you make a statement that your
09 company did not know of the hazards of benzene in the
10 raffinate, the point I'm trying to make is that you
11 personally can't speak for what the company knew,
12 correct?

13 A. That's correct.

14 Q. In other words, that wasn't your job to assess
15 the hazard of benzene or any other chemical they used
16 out there, right?

17 A. That's correct.

18 Q. So, you're hoping, as a human being and former
19 employee of United States Steel Corporation, that they
20 didn't know?

21 MS. HART: Object to form.

22 A. No, I think I wouldn't say hoping, I'm saying
23 I don't know.

24 Q. (BY MR. LUBEL) I understand that. But the
25 reason you'd make a statement that they didn't know,

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01 that you'd make a guess like that, is because you, in
02 your mind, think that the company that you worked for,
03 for a number of years, that if, in fact, they knew of
04 the hazards of benzene, you hope they would have told
05 you, correct?

06 MS. HART: Object to form.

07 A. I can only say that I feel that if they had
08 enough firm information and fact information that they
09 would have said something, but I cannot tell you what
10 point they know and how much they knew at any given
11 period.

12 Q. (BY MR. LUBEL) Do you agree, sir, that a
13 responsible company that manufactures chemicals has an
14 obligation to warn their employees about the hazards --
15 health hazards of such chemicals?

16 A. Yes, I do.

17 Q. And to the extent that that company that's
18 manufacturing these chemicals that can hurt people, to
19 the extent that they know or should know of those
20 hazards, do you agree that they should pass on
21 information to their customers that are purchasing it?

22 A. Yes.

23 Q. And would you agree, sir, that -- that the
24 customer that is purchasing the potentially hazardous
25 chemicals, if they're putting those hazardous chemicals

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01 in a product, that they should, in turn, pass it on to
02 the consumer, people that are buying it, using it and
03 are potentially exposed to it?

04 MS. HART: Objection, form.

05 A. If there is enough information available as to
06 definitive problems with a chemical contained in a
07 material, then it should be disseminated.)

08 Q. (BY MR. LUBEL) You --

09 A. But once -- once there is enough information,
10 and I don't know, because I'm not in that field, or
11 never was in that field, how you define "enough
12 information" --

13 Q. Were you --

14 A. -- in fact.

15 Q. Were you aware, sir, that United States Steel
16 Corporation started manufacturing benzene as early as
17 1918?

18 A. I have heard that, but I certainly can't say
19 for sure that it was 1918.

20 Q. But you learned that from working around
21 people at United States Steel Corporation, correct?

22 A. I think so, yeah.

23 Q. And you've testified about that before, that
24 you believe that to be true?

25 A. I think I did.

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01 Q. And are you aware of any studies that United
02 States Steel Corporation did to determine whether or not
03 benzene was, in fact, dangerous?

04 A. I am not aware of any studies that U.S. Steel
05 did.

06 Q. Are you familiar with a organization called
07 the American Petroleum Institute?

08 A. I know of it. I'm not real familiar with it.

09 Q. Well, if, in fact, the American Petroleum
10 Institute, in 1948, said that there is absolutely no
11 safe level of exposure to benzene, do you believe that's
12 something that people using those products should be
13 told about?

14 MS. HART: Objection, form.

15 A. I'm not sure I know what that statement meant,
16 there is no safe level.

17 Q. (BY MR. LUBEL) Have you ever seen the API
18 1948 study?

19 A. No.

20 Q. Were you --

21 A. Not that I know of.

22 Q. Were you aware that it was sponsored by the
23 American Petroleum Institute, made up of large
24 companies, oil companies?

25 A. I've never seen the study. I do not know what

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01 you're speaking of, and therefore, I don't know how to
02 answer that question.

03 Q. Well, if, in fact, there was a study that was
04 sponsored by members of the American Petroleum
05 Institute, in 1950 -- in 1948, at least the results were
06 in 1948, and that Harvard doctors and experts from the
07 Harvard Medical School, in particular Dr. Drinker, who
08 is a noteworthy expert, had written that there was no
09 safe level of benzene exposure, if all that is true,
10 would you agree that that information should have been
11 passed on to people using the product?

12 MS. HART: Objection, form.

13 A. Looking at it from this point and as now, it
14 probably should have been, but I must tell you that I
15 don't know what they mean by no safe level.

16 Did they measure that in percentages, or parts
17 per million and how well were they able to, in 1948,
18 determine the concentration of benzene? I don't know.
19 But gas chromatography, I don't believe, was even in its
20 infancy in 1948.

21 So, what are you speaking of when you say no
22 safe level? In other words, one percent?

23 Q. Here's what I'm telling you, Mr. Graeber, is
24 that, were you aware that in the late 1800s, there was
25 reports of benzene poisoning people?

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01 A. No, I was not aware.

02 Q. And how about the 1930s, that there was a risk
03 of leukemia, that people were getting leukemia from
04 working around benzene?

05 A. I was not aware.

06 Q. And, in fact, because of these reports, the
07 American Petroleum Institute started studying benzene,
08 and, in fact, learned, or at least their report stated,
09 that there was no safe level of exposure to it?

10 MS. HART: Objection, form.

11 A. My answer is, I was not aware. This is the
12 first time that I've heard it today.

13 Q. (BY MR. LUBEL) Well, let me ask you this,
14 when did United States Steel Corporation tell you that
15 the benzene in their plants could hurt you? I'm not
16 talking about from a flammability standpoint. I'm
17 talking about, if you're exposed to it, it can cause you
18 serious injury or death.

19 A. I personally was not -- I was -- pardon me. I
20 personally was not told --

21 Q. Ever?

22 A. -- of that. By anybody I directly worked for.

23 Q. Nobody you worked for at the company ever told
24 you that?

25 MS. HART: Object to form.

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01 A. Not that I recall.

02 Q. (BY MR. LUBEL) Did the company ever tell you
03 that you needed to wear a respirator around benzene, and
04 tell you the reason you need to wear a respirator is
05 because it can cause serious injury or death?

06 A. No.

07 Q. Did the company ever tell you --

08 A. Excuse me. When you say, did the company, I'm
09 not sure I know what you mean. Was there a corporate
10 letter, or did somebody mention it to me?

11 Q. That's what I'm asking you.

12 A. Casually or pointedly?

13 Q. That's what I'm asking you.

14 A. What?

15 Q. What's your answer to that?

16 A. Did someone mention it casually or pointedly?

17 Q. Correct.

18 A. Fellow workers had mentioned that you could
19 have a blood problem, they thought.

20 Q. When was that?

21 A. Oh, 1959 to early '60.

22 Q. Now, who were these fellow workers?

23 A. I was a relief foreman in the coal chemical
24 unit, and we produced what today would have been called
25 a very crude benzene through an acid washing process,

0

Obj:
402
All on
page

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01 and the conversation would come up once in a while when
02 we were handling or draining a vessel.

03 Q. These weren't company officers that were
04 telling you this, were they?

05 A. No. Absolutely not.

06 Q. These were working stifffs?

07 A. Like I was.

08 Q. That's what we call them in Texas.

09 A. Okay.

10 Q. The working man and woman that --

11 A. Thanks for the compliment.

12 Q. -- that doesn't office, you know, in the air
13 conditioning, they're the working stifffs, correct?
14 Those are the people you're talking about? Can you
15 remember their name?

16 A. No.

17 Q. Now, did you ever, once you got that
18 information, go to any of the managers, the supervis --
19 supervisory-type people, and say, look, I'm hearing
20 reports from my coworkers that this -- I hear that this
21 benzene can cause damage to the blood or the
22 blood-forming organs, what -- what am I supposed to do
23 about it?

24 A. I never asked that question.

25 Q. And I take it --

Continui
ng
Objectio
n

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01 A. I never worried about it.

02 Q. Well, did you believe in this 1950, 1960
03 time -- '59 or '60 time period, that if there was, in
04 fact, a real potential problem with this, that the
05 company would tell you about it, and tell you how to
06 handle it?

07 A. I would have felt that if they felt there was
08 a real problem, I would have been told.

09 Q. And told in a serious format, like a training
10 session or a policy and procedure manual or something of
11 that kind?

12 A. Oh, I would expect even a -- a letter being
13 issued, but I was not told --

14 Q. And that never happened?

15 A. -- nor -- not that I know of.

16 Q. You never remember getting a letter to that
17 effect, correct?

18 A. No.

19 Q. Now, did you think when you were having these,
20 you know, two or three conversations with the Radiator
21 Specialty people that you should pass on this
22 information that you had heard in 1959 or 1960, or was
23 your thought process, I don't need to pass this on
24 because it may or may not be true because the company
25 has never given me information on it?

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01 A. I never confronted myself with that particular
02 balance on the question. I believe that my information
03 at the time was no better than what Radiator Specialty
04 had.

05 Q. Well, how do you know that?

06 MR. RILEY: Objection, form.

07 A. I don't. I said I believe.

08 Q. (BY MR. LUBEL) Well, how -- how -- why do you
09 think that Radiator Specialty, in 1959 or 1960, would
10 know what you had heard, and that is, that the benzene
11 could damage the blood or the blood -- blood-forming
12 organs? Why do you say that?

13 A. I was told that you could have a blood problem
14 period. Not organs, nothing brought in that way.

15 Q. But why do you think --

16 MS. HART: Let him finish his answer.

17 Q. (BY MR. LUBEL) Why do you think Radiator --

18 MS. HART: Let him finish his answer. He
19 wasn't complete.

20 A. The people that were telling me this were
21 people that were in the plant as foremen and not
22 particularly educated in the products and their effects
23 at all. They were not -- they were very far from
24 being --

25 Q. (BY MR. LUBEL) A chemist?

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01 A. -- an accurate -- or an accurate source of
02 that information.

03 Q. So your point is, if these people at U.S.
04 Steel Corporation, that are not sophisticated from an
05 educational standpoint, if they know of this, then,
06 clearly, you thought the Radiator Specialty people would
07 know of it, is that your analysis?

08 A. No.

09 Q. Okay. What's your analysis?

10 A. I think you're putting words into my mouth.

11 Q. Well, then, tell -- let me ask the question.
12 Why do you believe that Radiator Specialty Company, or
13 its employees, that they would know what you had heard
14 in 1959 or '60 about benzene potentially causing damage
15 to the blood?

16 A. I never said that I believe that they knew
17 this in 1959 or '60. 1959 or '60 was when I would have
18 been working in the plant and had the casual
19 conversation.

20 Q. When do you -- you don't know when they knew
21 about it, or if they ever knew about it, correct?

22 A. I believe that in one of the phone
23 conversations I had with one of the two individuals,
24 that they brought up that benzene is being looked at, I
25 don't know whether it was as a carcinogen, or as a

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01 leukemia causer, or something of that nature, and that
02 is why they wanted to look at benzene concentration. I
03 cannot tell you the year that it occurred.

04 Q. Can you tell us who you spoke to?

05 A. It would have been either Kologiski or Tames.
06 I think those are the two names. By the way, I think I
07 pronounced it correctly.

08 Q. Kologiski or Tames?

09 A. Yes.

10 Q. So we won't call him Mr. K. anymore.

11 A. No.

12 Q. All right. (Let me -- let me mark as Exhibit)
13 Number 2, a document that your lawyers have furnished to
14 you, and ask you if you can identify that for us?

15 (Exhibit 2 marked.)

16 A. Okay. What do you want me to do?

17 Q. (BY MR. LUBEL) Do you -- do you recognize it?

18 A. Yes, I do.

19 Q. Do you rec -- look at the first page, it's got
20 your name on it, right?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Is that your signature?

25 A. It sure is.

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01 Q. Okay. Is that a true and correct copy of a
02 letter that you sent to Radiator Specialty Company?

03 A. As far as I am able to ascertain it, at this
04 point, it is correct.)

05 Q. What's the date of it?

06 A. It is May 25th, 1977.)

07 Q. And in that letter you're telling somebody
08 from Radiator Specialty Company that you can't send them
09 a Safety Data Sheet on raffinate, aren't you?

10 A. I stated that, and they were being reviewed at
11 that time for republication. I'm pretty positive that
12 that's what occurred. And when they are reviewing
13 things, the committee that had that said, we do not
14 issue anymore until we check these Safety Data Sheets
15 for accuracy, et cetera.)

16 Q. Well, what was Radiator Specialty Company's
17 employees supposed to do in the meantime while your
18 committee is reviewing the Safety Data Sheets? Are they
19 supposed to go out and do their own research on the
20 hazards of your product?

21 A. I don't know.

22 Q. What are they supposed to do to protect
23 themselves?

24 A. I don't know.

25 Q. Well, did you think about that?

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01 A. I gave them information from a chemical
02 constituency.

03 Q. Where does that letter say that the benzene
04 can damage the blood?

05 A. The letter I wrote doesn't say a thing about
06 it. That wasn't the question.

07 Q. Well, let me ask you this, why, in here, does
08 it say -- I'm going to read it and I'll give it right
09 back to you -- the second paragraph says, "As I
10 explained to you, I'm unable to furnish you a Safety
11 Data Sheet for this product at this time." And by this
12 product we're talking about raffinate, correct?

13 A. Correct.

14 Q. And then it goes on to say, "We will forward
15 one to you when the basis for necessary information is
16 firmly established."

17 What did you mean by that? What basis for
18 necessary information are you talking about?

19 A. I cannot accurately answer your question.

20 Q. Because you don't remember the conversation?

21 A. No. I -- I remember a bit about the
22 conversation, but when you're reviewing data and
23 statements of this nature, there had to be a concurrence
24 of a committee, and it's basically saying I cannot
25 furnish you with the Safety Data Sheet at this point,

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01 but I believe that they had received one in the past.

02 Q. You have no basis for that. You didn't send
03 them one, did you?

04 MS. HART: Objection, form.

05 A. No.

06 Q. (BY MR. LUBEL) So you don't know if they got
07 one?

08 A. I believe they got one.

09 Q. You believe. But you don't know that they got
10 one?

11 A. Well, we'll go back to some of my other
12 statements where I used that type of wording and you
13 come back to me with it --

14 Q. I'm asking you right now.

15 MS. HART: Let him finish his statement.

16 Q. (BY MR. LUBEL) Do you know --

17 A. I believe that they had received a Safety Data
18 Sheet prior to this time from USS Chemicals, because I
19 believe there was one that was put together earlier than
20 this time period, and the only reason to put it together
21 would have been for dissemination to your only customer.

22 MR. RILEY: Objection, responsiveness.

23 Q. (BY MR. LUBEL) Who put it together? Who put
24 it together?

25 A. The people that were in the committee that

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01 started the form for Safety Data Sheets.

02 Q. Who were they?

03 A. I don't know at this point.

04 Q. All right. So you don't know who the people
05 were that were on this alleged committee, correct?

06 MS. HART: Objection, form.

07 A. I believe I knew at the time, but I don't know
08 now.

09 Q. (BY MR. LUBEL) All right. Now, you were
10 never furnished with a Safety Data Sheet, that's what
11 you told us earlier, correct?

12 A. That is correct. Not when I was in a plant.

13 Q. All right. Not when you worked -- were you
14 ever furnished the Safety Data Sheet as an employee of
15 the company?

16 A. No.

17 Q. Did you ever -- were you ever asked to
18 participate in what it should say? Anybody ask you your
19 opinion?

20 A. No.

21 Q. And you didn't personally drop this alleged
22 Safety Data Sheet in the mail to Radiator Specialty
23 Company, did you?

24 A. No.

25 Q. Did you ever tell somebody in your office,

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01 mail one to Radiator Specialty Company? Did you ever do
02 that?

03 A. No.

04 Q. Can you tell us anybody that you know did?

05 A. I am -- I cannot name anybody.

06 Q. Can you think of an event, go back to whatever
07 this time period is, the '60s or '70s, and think to
08 yourself and say, you know what, I remember during this
09 time period overhearing somebody in the offices or in a
10 plant say we mailed this to Radiator Specialty Company,
11 do you ever remember that?

12 A. I cannot remember that, no.

13 Q. Do you ever remember anything like that?

14 A. No, but I -- the person that I worked for was

15 part of the group, his name was Frank Sedlack, and I at
16 times would hear from him about, either through
17 grumbling or what he might call communication, that this
18 information was being put together, and at that point I
19 knew that the only direction or reason for doing that
20 would have been for Radiator Specialty, because they
21 were the only customer of the raffinate --

22 MR. RILEY: Objection, responsiveness.

23 A. -- at the time. And the document had no
24 reason to exist internal ly in a file cabinet. It was
25 put together for a purpose. And I have to assume that

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611, non-responsive
602, speculation

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01 somebody, and it wasn't me, because I basically wasn't
02 allowed to furnish that information at that time.)

03 Q. (BY MR. LUBEL) Why?

04 MR. RILEY: Objection, responsiveness.

05 Q. (BY MR. LUBEL) Why couldn't you furnish it?

06 A. Because I was not the contact for Radiator
07 Specialty. If they called me, I could reply, but on
08 occasion, sometimes I would have to have someone else
09 answer the question.

10 It was policy about who was the contact for
11 the customer, the salesman, the sales manager, versus,
12 at that time, the technical representative, which is
13 what I was.

14 Q. Well, did you work at this plant that made the
15 benzene?

16 A. Did I work?

17 Q. At the plant?

18 A. At Clairton?

19 Q. Right.

20 A. No, I never actually worked at Clairton, only
21 Gary.

22 Q. Where was the raffinate made?

23 A. At Clairton.

24 Q. Did you ever visit the plant?

25 A. Yes, I did.

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01 Q. For what type of reasons? Why would you go
02 there?

03 A. To educate myself. That was the original
04 intent.

05 Q. Did you see this unit where it was being made?

06 A. Yes, I did.

07 Q. Did you see workers walking around there?

08 A. Absolutely.

09 Q. When was the first time you were there?

10 A. In 1961.

11 Q. What type of protection were those workers
12 wearing around that raffinate?

13 A. Nothing.

14 Q. Not a thing?

15 A. Correct.

16 Q. No respirator?

17 A. No.

18 Q. No handkerchief?

19 A. No.

20 Q. No gas masks?

21 A. No. There were none that I saw.

22 Q. How about, were they wearing any rubber
23 gloves?

24 A. Oh, I think at times they wore gloves, but I
25 don't know whether they were rubber or fabric.

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01 Q. Now, did you go back to the plant on occasion?

02 A. I did. Throughout the years, I did go back
03 there.

04 Q. Now, at any time throughout the years, did you
05 ever see it change to where those people were wearing
06 protection around the raffinate?

07 A. Not that I recall.

08 MR. LUBEL: Can we take a short break? I
09 think I'm almost done.

10 MS. HART: All right.

11 MR. LUBEL: Is that all right with you,
12 Mr. Graeber?

13 THE WITNESS: Yeah.

14 VIDEO OPERATOR: The time is 10:29 a.m.
15 We'll go off the video record.

16 (A break was taken from 10:29 to 10:37.)

17 Q. (BY MR. LUBEL) Mr. Graeber, we took a short
18 break so that everybody could get a drink and go to the
19 restroom, correct?

20 A. I believe so.

21 Q. All right. And during the break, I've shown
22 you what I had earlier marked as Exhibit Number 1, which
23 is a Notice of Deposition.

24 A. Okay.

25 Q. Correct? All right. And can you tell from

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01 looking at it, that -- that generally what I've asked
02 for is for the corporations that you used to work for,
03 to provide representatives to speak on the company's
04 behalf? You understand that's generally what we're
05 doing here today?

06 A. Yes, I do.

07 Q. All right. And in particular, I asked for the
08 company to designate people most knowledgeable about
09 like document retention and destruction policies and
10 procedures, and that wasn't your area, true?

11 A. That is correct. It is not.

12 Q. And the company's membership and/or
13 affiliation with industry or trade groups, that was not
14 your job?

15 A. Correct.

16 Q. All right. And in this case, you were not
17 asked to search and locate any documents that I had
18 asked for, for my clients, correct?

19 A. Correct.

20 Q. And although we've asked you questions today
21 about the relationship between U.S. Steel, USX,
22 Aristech, Marathon, et cetera, you're not -- you're
23 clearly not the person most knowledgeable about those
24 relationships, if any?

25 A. That's correct.

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01 Q. So, what you have done, at our request, was
02 you've actually looked at Exhibit Number 1, the
03 deposition, and you circled the areas for which you had
04 anything to say about; is that true?

05 A. Correct.

06 Q. And you've marked defendant's sales of
07 benzene-containing products to Radiator Specialty
08 Company, and by that it says, in part, and we had a
09 discussion off the record with your lawyer present
10 wherein you told us that you knew that raffinate that
11 contained benzene was sold to Radiator Specialty over a
12 number of years, correct?

13 A. Correct.

14 Q. But you're not the person that actually knows
15 where the records are that reference that, right?

16 A. That is correct.

17 Q. That would be in a different department?

18 A. Yes.

19 Q. All right. So, that's why you said in part
20 you know that it happened, but you can't testify all the
21 years that it happened and things of that nature?

22 A. That is correct.

23 Q. All right. You also know, and you've told us
24 about, some testing that was done on the raffinate, and
25 we talked about that, that's the daily testing that was

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01 done to determine the relative components, or
02 ingredients, if you will, of the raffinate?

03 A. Well, it was done as a control to minimize
04 benzene and it's analogs in the raffinate.

05 Q. But at any rate, those -- those daily test
06 results also told you components other than benzene and
07 their relative amounts in the product?

08 A. Correct.

09 Q. Do you know where those daily records would
10 be?

11 A. No, I do not.

12 Q. Now --

13 A. You're talking about a laboratory that was
14 disbanded, and moved, plant shut down, and I have no
15 idea.

16 Q. But you would rely on the laboratory to
17 provide you with accurate information?

18 A. Correct.

19 Q. In other words, you wouldn't take the sample
20 of the raffinate, walk it down to the laboratory and
21 then look at it?

22 A. No.

23 Q. That was somebody else's job?

24 A. Correct.

25 Q. So you would actually get daily results, or

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01 would you see daily results?

02 A. No, I did not see daily results because I was
03 not involved with the control of the operation.
04 However, I was privileged to receive the information if
05 I requested it.

06 Q. And I take it that you didn't ask for daily
07 results?

08 A. No.

09 Q. There was times, and I think you talked about
10 it earlier, where you would ask for a couple-month
11 period of time and look at that data?

12 A. I didn't do it. I had the person involved in
13 it, I told them what I wanted him to do for me, and he
14 did it, and I took his results.

15 Q. So you'd look at a summary?

16 A. He would give me a summary.

17 Q. All right. And the reason you would do
18 something like that with regard to raffinate is to
19 report back to the customer, such as Radiator Specialty
20 Company, what those results were?

21 A. Correct.

22 Q. But that's not something that you did every
23 month or every day or anything like that?

24 A. No.

25 Q. And as a matter of fact, we've only seen maybe

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01 two documents that reference that area, correct?

02 A. Uh-huh.

03 Q. How much benzene and other --

04 A. Yes.

05 Q. -- stuff was in the raffinate?

06 A. I believe there are only two in there.

07 Q. So that was not something that you did on a
08 regular basis?

09 A. No.

10 Q. People in the company were measuring it on a
11 daily basis, but that was not what you did, and you
12 didn't review those tests?

13 A. Correct.

14 Q. Was there any other testing on the raffinate
15 that you're familiar with, other than the testing that
16 was done on a daily basis to determine the relative
17 concentrations in the raffinate of the components?

18 A. None that I know of.

19 Q. All right. Are you familiar with any
20 epidemiological or toxicological testing that was done
21 on raffinate?

22 A. I am not aware of it.

23 Q. That's not your area?

24 A. It's not my area, and I've never even heard of
25 anything.

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01 Q. All right. And you wouldn't be the company
02 official most knowledgeable about the health hazards of
03 raffinate or benzene?

04 A. Absolutely, no.

05 Q. You've told us what you can remember about
06 that, but that's not your expertise?

07 A. That is correct.

08 Q. And then, the last area that we asked for was,
09 information supplied by defendants and any subsidiaries
10 to users of raffinate, including instructions,
11 recommendations and warnings, and have you told us
12 everything you know about that so far?

13 A. I believe so.

14 Q. All right. Now --

15 A. Which wasn't much, I guess, but --

16 Q. But whatever you can remember, you told us
17 about; is that fair?

18 A. Yes.

19 Q. Now, I've seen some of your prior testimony
20 where you acknowledge that -- that you, when you were
21 employed by United States Steel Corporation, that you
22 appreciated, since you only had one customer of
23 raffinate, that being Radiator Specialty Company, that,
24 in fact, they were using that for their Liquid Wrench
25 products, correct?

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01 A. I didn't learn that until one of those two
02 conversations that occurred between either Kologiski or
03 Tames and myself.

04 Q. All right. But, at any rate, since you only
05 had one customer of raffinate, being Radiator Specialty
06 Company, if you wanted to, you could have learned, in
07 1960, what they were using it for, correct?

08 A. I'm not sure that that information was
09 disseminated by Radiator Specialty, and that's where it
10 would have come from.

11 Q. Yeah.

12 A. Had to have come from.

13 Q. But if you would have asked them, they may or
14 may not have told you?

15 A. That's correct.

16 Q. Okay. But you never asked them?

17 A. I never did, no. I never had contact with
18 them other than the two times through letters.

19 Q. Well, there is some discussion in your prior
20 testimony about the fact that you had yourself used
21 Liquid Wrench before, right?

22 A. Uh-huh.

23 Q. Is that true?

24 A. Yes.

25 Q. And you -- you recognized and appreciated that

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01 Liquid Wrench was a product that was distributed
02 throughout the United States?

03 A. I knew about Liquid Wrench when I worked
04 during the summer at Linde Crystal Production Plant
05 where they made synthetic sapphire, and they had some
06 machinery there, and one of the machines froze up, and
07 they, pardon my English, but defrosted it with Liquid
08 Wrench, meaning they freed the motor and the unit up.

09 Q. But I guess my point is, that you knew that
10 product was available to consumers in stores?

11 A. I had bought some once.

12 Q. Where?

13 A. At a hardware store in the area that I lived
14 in.

15 Q. All right. Is there any testimony that you've
16 given today that you'd like to change your answers
17 before I sign off?

18 A. Not that I know of, but --

19 Q. Well, just --

20 A. -- after I read it in a couple of months, I
21 probably would find something that I'd say, did I say
22 that?

23 Q. But as we sit here right now, there is nothing
24 that sticks out in your mind that you think you need to
25 change so that the record is fair and accurate, true?

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01 A. I don't believe so.

02 Q. And --

03 A. There might have been some misunderstandings
04 here and there, but I hope I have expressed everything
05 correctly.

06 Q. You've done your best today?

07 A. As far as I know.

08 Q. And as you sit here right this moment, you
09 can't think of anything that you want to tell me that's
10 different than you said earlier, correct?

11 A. No.

12 Q. Is that true?

13 A. That's correct.

14 Q. And have I been fair and courteous to you?

15 A. Oh, absolutely.

16 MR. LUBEL: Thank you very much for your
17 time.

18 THE WITNESS: Thank you.

19 EXAMINATION

20 BY MR. RILEY:

21 Q. Mr. Graeber, Jim Riley. We've met before.

22 A. Yes.

23 Q. And I represent Radiator Specialty. And
24 they're handing me the mike, as I talk softly, so I'm
25 going to put that on.

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01 Mr. Graeber, one thing you said that struck me
02 as kind of odd, and I'm wondering if you made a mistake
03 or meant to say it, I believe I heard you say that the
04 government was investigating benzene in '67 or '68. Did
05 you mean to say that, or did you misspeak and meant to
06 say '77, '78?

07 MR. LUBEL: Objection, form.

08 MR. RILEY: Let me rephrase the question.

09 Q. (BY MR. RILEY) Tell me whether or not you
10 meant to say that the government was investigating
11 benzene in '67, '68, or did you misspeak and mean to say
12 '77 to '78?

13 A. I probably transplanted the dates, but at the
14 same time, they could very well have been looking at it
15 in '67 and '68.

16 Q. When you were answering Mr. Lubel's questions,
17 did -- is it -- was it your intent to say '67, '68, or
18 did you misspeak and meant to say '77, '78?

19 MR. LUBEL: Objection, form.

20 A. I'd have to go back to the question that I was
21 answering.

22 Q. (BY MR. RILEY) Okay. Fair enough.

23 A. And I don't know what it was at this point.

24 Q. Well, let me see if I could ask you something
25 else. You talked about having a conversation with

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01 somebody at Radiator Specialty, and you mentioned about
02 government regulations. And you told us here today you
03 couldn't remember the year.

04 Now, do you remember having your deposition
05 taken back in May 10th of 2002, in the case of Howard
06 Collins, remember that, sir?

07 A. May 10th?

08 Q. Right. 2002. It was taken in Rosemont,
09 Illinois.

10 A. All right.

11 Q. And you were asked a question, let me see.
12 I'll read your testimony, on page 12 -- on page 49, line
13 12, "I'm trying to remember exactly whether it was Tames
14 or Kologiski had mentioned that the government was going
15 to be placing threshold limit values on materials for
16 benzene."

17 At line 17, another question: "Now, would
18 this have been your '77 conversation with them?"

19 Answer: "I believe so."

20 Does that -- I'll show it to you. Did I read
21 that correctly?

22 MR. LUBEL: Objection, form.

23 A. Where are we here? Okay. Now, what is --

24 Q. (BY MR. RILEY) First of all, do you remember
25 that to be your prior testimony?

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01 A. Yes.

02 Q. Does it refresh your recollection about when
03 the conversation about government regulations would have
04 occurred with either Mr. Tames or Kologiski?

05 A. It would have to be within the time frame of
06 that letter.

07 Q. Okay. Which would be 1977, correct?

08 A. I believe so.

09 Q. Okay. And that's when the government
10 regulations time period that we're talking about would
11 have been in 1977, that you know of?

12 MR. LUBEL: Objection, form.

13 Q. (BY MR. RILEY) Am I correct or not in that?

14 A. I don't know when the government started.

15 Q. Fair enough. Okay.

16 A. I don't know when they started coming to
17 conclusions, and then there was furors over what the
18 limits should really be.

19 Q. Okay. But, in any event, 1977 was the time of
20 the discussions with one of the representatives with
21 Radiator Specialty about the regulations, as per your
22 prior testimony?

23 A. Correct.

24 Q. Now, let's talk generally, in the '60s and the

(25) '70s, was benzene a rare chemical, or was it in wide use

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01 in the United States?

02 A. Wide use.)

03 Q. Was U.S. Steel the only company that
04 manufactured benzene?

05 A. Absolutely, no.)

06 Q. How many companies, from your recollection,
07 were in the business of manufacturing benzene in the
08 '60s and '70s?

09 A. I don't know the answer to that, but it was
10 voluminous.)

11 Q. I believe in prior testimony you've said that
12 it could be as many as 75, is that correct or not?

13 A. Okay, then.)

14 Q. Sounds reasonable?)

15 A. It's as good as any number I could come up
16 with now.)

17 Q. All right.)

18 A. Of course, that's changed now versus --)

19 Q. Of course. And I'm talking about the '60s
20 and '70s, there were many companies that were in the
21 business of manufacturing benzene?)

22 A. Yes.)

23 Q. Had wide commercial uses in the '60s and '70s,
24 correct?)

25 A. Yes.)

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01 Q. And you've already testified that raffinate
02 was a by-product?

03 A. Correct.

04 Q. And benzene, in the '60s and the '70s, was,
05 frankly, the more valuable chemical than the by-product,
06 right?

07 A. Beyond a doubt.

08 Q. And from a pure economic sense standpoint, it
09 was absolutely to the company's benefit to get as much
10 of the benzene out of raffinate as possible?

11 A. Correct. I believe I stated that today, also.

12 Q. Now, raffinate also contains a chemical called
13 cyclohexane, correct?

14 A. Correct.

15 Q. Now, we have some testimony in this case about
16 Mobil Corporation doing a test on Liquid Wrench. But
17 I'm not even going to limit my question to Mobil.

18 If any company who did not know the
19 composition of raffinate, and that it had cyclohexane in
20 it, were to test Liquid Wrench, and did not gear their
21 analysis for a separation of cyclohexane and benzene,
22 could cyclohexane overlap benzene and be confused with
23 benzene on the final percentage and get a false reading?

24 A. Yes. And speaking of gas chromatography and
25 lumping together of two components --

0
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602, foundation

611, leading Radiator Specialty has a unified interest

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602, foundation and hypothetical. 611, Leading Radiator Specialty has a unified interest

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01 Q. Because they could look the same?

02 A. -- you had to be able to do a chemical-type
03 separation to get those apart because they boil very
04 close together. This is the reason that you have a Udex
05 Unit. You can't separate them by distillation, so you
06 extract one from the other.)

07 Q. And so, when you -- when you confuse
08 cyclohexane with benzene in an analysis, what you're
09 going to get is an artificially high percentage finding
10 of what may be mistakenly believed as benzene, correct?

11 MR. LUBEL: Objection, form.

12 A. Correct.)

13 Q. (BY MR. RILEY) Let me ask it again. Am I
14 correct or not that if a company were to do an analysis,
15 again with the assumption of what I said in my other
16 question where they didn't know the composition of
17 cyclohexane and raffinate, and they were to have a
18 finding of -- and cyclohexane, as you testified, could
19 be confused as overlapping benzene, can you tell me
20 whether or not you could then have an artificially high
21 reading of benzene because it would -- the cyclohexane
22 might be misread as benzene?)

23 A. That is correct.)

24 MR. RILEY: I think that's all of the

25 questions I have, Mr. Graeber. Thank you very much for

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01 your time. I'll pass the witness.

02 MR. LUBEL: I've just got -- do you want
03 me to do mine and you can do yours, or do you want to go
04 now? It's up to you.

05 MS. HART: You can go ahead.

06 MR. LUBEL: You may want to --

07 MS. HART: Go ahead. We'll wrap it up
08 after you finish.

09 MR. LUBEL: Okay.

10 RE-EXAMINATION

11 BY MR. LUBEL:

12 Q. Who produced raffinate in the United States
13 during the 1960s other than United States Steel
14 Corporation?

15 A. Any --

16 Q. I'm asking you for names.

17 A. I cannot give you names.

18 Q. Can you name one company other than United
19 States Steel Corporation that manufactured or produced
20 raffinate other than your company?

21 A. For sale?

22 Q. Correct.

23 A. No, I cannot.

24 Q. How did United States Steel package and
25 deliver the raffinate that was sold to Radiator

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403, waste of time, cumulative

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01 Specialty Company?

02 A. It was shipped in tank cars, 10- and
03 20,000-gallon quantities, I believe. It's possible that
04 an occasional truck was shipped. I don't know that for
05 sure.

06 Q. Tank cars, you mean by rail?

07 A. Yes.

08 Q. And most of the quantities were 10- to 20,000?

09 A. Yes.

10 Q. And how was the product off-loaded from rail
11 or truck into the Radiator Specialty facility, if you
12 know?

13 A. I have no idea how they did it.

14 Q. Were any of the radiator -- strike that.

15 Were any of the shipments of raffinate from
16 United States Steel to Radiator Specialty Company
17 delivered by U.S. Steel in 55-gallon drums, say, or
18 other containers?

19 A. We had no drumming facility at Clairton for
20 benzene and derived products. There was drumming for,
21 oh, cresylic acids, but that was abandoned, and I can't
22 remember when that was. It was a totally different
23 area.

24 Q. As you recall it, the raffinate that was
25 delivered by U.S. Steel to Radiator Specialty was done

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01 in mass quantities?

02 A. In bulk.

03 Q. And was there some sort of pipeline that would
04 take it from the unit to the -- to the railcar?

05 A. In general, in anything that was loaded into
06 tank cars or trucks, you had a storage tank, you had a
07 line that you could utilize from that storage tank,
08 sometimes it would be in common with another one, but
09 they were normally purged with product before you would
10 use it. It would just go right to the tank car at a
11 loading station, which was a spout that you could swivel
12 into the top of a tank car.

13 Q. How big was the storage tanks that the
14 raffinate resided in?

15 A. I believe it was a 200,000-gallon storage
16 tank. The reason I pick that out is, if we had to load
17 a barge, we had to preload some tank cars and then
18 collect more, and the barges was when the material was
19 shipped as reformat, not raffinate.

20 Q. Same thing, but different name?

21 A. Correct.

22 Q. And as I appreciate discussions you've had
23 before today, the reformat was sold to Ashland Oil
24 Company?

25 A. Correct.

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01 Q. And it was sold via barge?

02 A. Normally.

03 Q. And you don't know if there were any warnings
04 or instructions that accompanied the raffinate that went
05 to Radiator Specialty Company, correct?

06 A. No. There might have been placards on the
07 cars, but --

08 Q. I'm talking about when the product was shipped
09 from U.S. Steel to Radiator Specialty Company, do you
10 know of any instructions or warnings that accompanied
11 the product?

12 A. When you say "instructions," I don't know -- I
13 think at one point we had adopted putting, you'd call
14 them chemical tags or whatever the name was, I can't
15 tell you for sure, onto cars that would have some basic
16 information.

17 Q. Would it tell on instructions how to use the
18 raffinate?

19 A. No.

20 Q. Would it tell about that the raffinate
21 contains benzene, that it's poison? Would it contain
22 that kind of health hazard information?

23 A. I don't think it contained that information,
24 no. I'm not sure, but I don't think.

25 Q. But as you sit here, you can't tell us that?

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01 A. No.

02 Q. Correct?

03 A. Correct.

04 MR. LUBEL: Okay. Thank you.

05 EXAMINATION

06 BY MS. HART:

07 Q. And I have a few questions, Mr. Graeber.

08 You've talked some about the Udex Unit that was based at

09 Clairton Works, right?

10 A. Yes.

11 Q. Just tell us briefly how that worked, how

12 raffinate resulted from the use of the Udex Unit?

13 A. Okay. The Udex Unit was put in to separate

14 aromatic hydrocarbons from aliphatic and cycloparaffins.

15 Q. Excuse me, what -- what product or material

16 were you working with to do this separation?

17 A. Triethylene and diethylene glycol.

18 Q. All right. That's not my question. My

19 question was, what material were you running through the

20 Udex Unit to separate out like with the glycols you were

21 talking about?

22 A. We hydro -- hydrodesulfurized light oil, which

23 was the benzene-containing material obtained from

24 coke-oven gas. And in hydrodesulfurizing, you would

25 form paraffins and cycloparaffins, which were difficult

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01 to remove by physical separation, such as distillation
02 from the aromatics, meaning benzene, toluene and xylene.

03 Q. Okay. And the underlying material you're
04 talking about trying to separate all these other
05 chemicals from was the light oil?

06 A. Correct.

07 Q. Okay. Go ahead.

08 A. Now, light oil was hydrodesulfurized. After
09 it was hydrodesulfurized, it was extracted with the
10 triethylene or diethylene glycol, and the benzene,
11 toluene and xylene, under perfectly theoretical usage,
12 would all be absorbed into the glycol.

13 The remaining material, that which was not
14 absorbed in the glycol, was then raffinate. And I
15 believe that's the definition of it in the UOP, Udex
16 process.

17 Q. All right. What is UOP?

18 A. Universal Oil Products.

19 Q. Who are they?

20 A. They owned the patent on the Udex process.

21 They're -- I believe you call them a brain trust for the
22 oil industry.

23 Q. All right. So, did U.S. Steel buy the Udex
24 process from UOP?

25 A. Correct.

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01 Q. Was the Udex process or -- was that available
02 to other companies?

03 A. Yes, it was.

04 Q. Was it purchased by other companies?

05 A. Oh, I'm sure.

06 Q. And used in the same way that U.S. Steel used
07 it at the Clairton works?

08 MR. LUBEL: Form and speculation is my
09 objection.

10 A. Let me answer it this way, not in exactly the
11 same way, because we were predominantly aromatic, and
12 they were more 50/50 or more aliphatic and cycloparaffin
13 in the string that they would put through, so we were
14 sized differently, and you operate it differently.

15 Q. (BY MS. HART) All right. U.S. Steel used the
16 Udex Unit in the processing of its light oil that was
17 derived from the coke ovens, correct?

18 A. Yes.

19 Q. Other companies used Udex Units in the
20 processing of other materials, is that what you're
21 telling us?

22 A. Normally, reformat from a reformer.

23 Q. Which -- what material were they running
24 through the Udex Unit?

25 A. A -- a wide-band fraction that contained

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01 benzene, toluene and xylene, plus its saturated
02 materials; hexane, heptane and also cyclohexane,
03 methylcyclohexane --

04 Q. Okay. Well, let me stop you real quickly.

05 A. Please.

06 Q. Let me ask you, though, what the -- were other
07 companies, to your knowledge, using the Udex Unit to
08 process light oil that had been derived from coke ovens
09 as U.S. Steel was?

10 MR. LUBEL: Objection, form.

11 A. I don't believe so at that time.

12 Q. (BY MS. HART) Okay. Were other companies
13 using Udex Units to process light oil derived from
14 something other than coke-oven gases?

15 A. If you rephrased that to process other
16 materials other than coke oven, or material derived from
17 coke-oven gas, the answer is, yes.

18 Q. All right. So, they were -- you're not aware
19 of other companies using Udex Units to process what was
20 the result of the coke-oven gases?

21 A. That's correct.

22 Q. Okay. And that's what distinguished the U.S.
23 Steel use from the use of others, but other Udex Units
24 were in operation and producing by-products as well,
25 correct?

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01 A. Not by-products, because you're dealing with a
02 refinery.

03 Q. Okay.

04 A. They were just basically separating --

05 Q. Okay.

06 A. -- main streams.

07 Q. All right. So they were separating just other
08 things.

09 Now, when U.S. Steel finished with the
10 processing through the Udex Unit, what did it do with
11 the raffinate that resulted from that process? Where
12 did it keep it?

13 A. Oh, you take it from a day collection tank and
14 transfer it to a storage tank.)

15 Q. Was that that 200,000-gallon tank you referred
16 to in response to Mr. Lubel's questions?)

17 A. Correct.)

18 Q. Okay. So, the daily analysis that the lab
19 did, was that done -- was that done on the product
20 before it went into the 200,000-gallon tank?)

21 A. Correct.)

22 Q. Okay. You need to speak up, all right?

23 MR. LUBEL: For the court reporter, not
24 for us.

25 MS. HART: All right.

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01 Q. (BY MS. HART) So, if you had a day's analysis
02 that showed 14 percent of benzene in the raffinate for
03 that day, that production would be put into a
04 200,000-gallon storage tank, correct?

05 A. Correct.

06 Q. Would other days' productions be added to that
07 200,000-gallon storage tank?

08 A. Yes.

09 Q. Okay. And what was the average, from your
10 analysis, that you requested of benzene in raffinate
11 that was shipped out?

12 A. At the time that I did that, I believe it was
13 three percent.

14 Q. All right.

15 A. Yes.

16 Q. All right. Now, you're looking -- you're
17 looking at what's been marked as Exhibit 2, correct?

18 A. Yes.

19 Q. All right. And page 2 of Exhibit 2 is a
20 document that you prepared and forwarded to Radiator
21 Specialty Company; is that correct?

22 A. Yes, it is.

23 Q. All right. And the composition of raffinate
24 is given on this page, correct?

25 A. Yes, it is.

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01 Q. I guess it's called approximate composition?

02 A. Yes.

03 Q. And tell us what the composition -- tell us
04 how much benzene was in this raffinate, as you
05 approximated it.

06 A. Well, the ranges were between one and 14
07 percent, and the approximate average of all of the
08 analyses looked at was three percent.

09 Q. Okay. Are you aware of any benzene being
10 shipped out directly from a daily production that might
11 be 14 percent to a customer?

12 A. Any raffinate?

13 Q. Yes.

14 A. With a benzene --

15 Q. With a benzene content --

16 A. -- content of 14 percent?

17 Q. Thank you. Yes.

18 A. No, I don't think you would find something
19 that high, because of the idea I've mentioned before, if
20 you saw 14 percent the unit wasn't functioning properly
21 and an adjustment would have to be made to try to reduce
22 that.

23 Q. Okay. And the intention and purpose, then,
24 would be to reduce the amount of benzene in the next
25 day's production, correct?

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01 A. Correct.

02 Q. And that next day's production would be added
03 to the previous day's production in that 200,000-gallon
04 tank, correct?

05 A. Yes.

06 Q. And it would go on like that day after day?

07 A. That is correct.

08 Q. All right.

09 MR. LUBEL: We're going to change tapes.

10 VIDEO OPERATOR: This concludes tape one
11 to the deposition of Mr. James Graeber. The time is
12 11:15 a.m., and we're off the video record.

13 (A break was taken from 11:15 to 11:16.)

14 VIDEO OPERATOR: The time is 11:16 a.m.,
15 and we're on the video record.

16 Q. (BY MS. HART) All right. Mr. Graeber, we
17 were looking at page 2 of Exhibit 2, which is the
18 analysis that you prepared and forwarded to Radiator
19 Specialty Company at their request, correct?

20 A. Yes, we were.

21 Q. Now, when was this analysis done?

22 A. Well, the letter and the information was put
23 in print on May 25th, 1977.

24 Q. All right. Now, you indicated to Mr. Lubel,
25 that Exhibit 2 seemed to be a true and correct copy of

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01 the document you sent to Radiator Specialty. Let me ask
02 you a couple of questions.)

03 Do you know whose handwriting is across the
04 top here? There is some handwriting on the top right?

05 A. I have no idea.)

06 Q. Did you write that there?

07 A. No.)

08 Q. Okay.)

09 MR. LUBEL: What's that say? I haven't
10 seen that. Can I look at it real quick?

11 MS. HART: Sure. Lance --

12 MR. LUBEL: I can't read it.

13 MS. HART: I know. But my whole purpose
14 is being that I think this stuff was added after he sent
15 the letter --

16 MR. LUBEL: Okay.

17 MS. HART: -- you know, and I just want
18 to -- I want to make sure that true and correct
19 doesn't --

20 MR. LUBEL: Okay.

21 Q. (BY MS. HART) Did you put that handwriting on
22 there?

23 A. No.)

24 Q. Okay. And this -- there is a stamp on there,

25 "R & D, May 27, 1977," did you put that on there?)

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01 A. No, I did not.

02 Q. And there is a stamp at the bottom, "RSC
03 000177," did you put that on there?

04 A. No.

05 Q. Okay. On the second page there is an "RSC
06 000178," did you put that on there?

07 A. No, I did not.

08 Q. Okay. But other than that -- oh, and there is
09 a check mark here on the right --

10 A. Yeah. I did not put that on there.

11 Q. -- right margin. Okay. Other than that, this
12 document is what you sent, other than those notations
13 that we just pointed out, these documents are what you
14 sent to Radiator Specialty, to the best of your
15 knowledge?

16 A. Yes.

17 Q. Okay. Now --

18 MR. LUBEL: Is there something good on
19 there that I'm not recognizing?

20 MS. HART: No. No. I'm just --

21 MR. LUBEL: Okay.

22 MS. HART: But you asked him true and
23 correct, and --

24 MR. LUBEL: Now you got me wondering
25 whether I need to get a magnifying glass or something

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01 to --

02 MS. HART: No. No. No.

03 Q. (BY MS. HART) All right. (Mr. Graeber, you
04 had referenced a Safety Data Sheet for raffinate in your
05 earlier testimony, correct?)

06 A. Yes.

07 Q. Okay. Let me show you this document and see
08 if you can identify that.

09 A. Okay.

10 Q. What is that?

11 A. I have seen this.

12 Q. Okay.

13 A. It's a Safety Data Sheet concerning raffinate.
14 I believe it was the product of a committee that was
15 working on Safety Data Sheets. I do not know when it
16 was put together.

17 Q. Okay. (You had earlier testified) in earlier
18 depositions, (I think, that this was a time period of
19 about 1967 that a committee put together various Safety
20 Data Sheets for USS Chemicals products, do you remember
21 that?)

22 MR. LUBEL: Objection, form.

23 A. I don't remember the date.

24 Q. (BY MS. HART) Okay.

25 A. I can look at this and see somebody put

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01 5-15-67 on there.)

02 Q. Okay. All right. Now, was this a USS

03 Chemicals document?)

04 MR. LUBEL: Objection, form.

05 A. I certainly believe it was. I don't -- I

06 mean, there it is, USS Chemical Safety Data Sheet for

07 raffinate.)

08 Q. (BY MS. HART) Okay. And in 1967, were -- did
09 USS Chemicals have any responsibility for the production
10 of raffinate at Clairton?

11 A. No.

12 Q. Okay. USS Chemical's responsibility was what
13 as related to raffinate?

14 A. At that time we were marketers --

15 Q. Okay.

16 A. -- of the products produced at Clairton.

17 Q. You didn't control the production -- USS
18 Chemicals people did not control the production at
19 Clairton?

20 MR. LUBEL: Objection, form.

21 A. That is correct.

22 Q. (BY MS. HART) All right. And you at that
23 time were assigned to USS Chemicals, division of United
24 States Steel Corporation, correct?

25 A. Yes, I was.

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01 Q. Okay. And how many people worked in the
02 technical -- your job title was what in the '60s?

03 A. Technical representative.

04 Q. Okay. How many technical representatives were
05 there for USS Chemicals?

06 A. It depends on when you're speaking. Probably
07 two at that time.

08 Q. Okay. All right.

09 A. It changed, oh, my guess is around '69.

10 Q. In 1969, you mean?

11 A. The organization changed its --

12 Q. All right. Okay. But you were one of two
13 technical representatives that USS Chemicals had --

14 A. Well --

15 Q. Let me finish my question, okay? You were one
16 of two -- or were you one of two technical
17 representatives employed by USS Chemicals to interact
18 with customers on their technical requirements?

19 A. I was one of two people, but the other person
20 was called the manager of technical service.

21 Q. Okay. All right. (Now, for what purpose would
22 USS Chemicals have for preparing the Safety Data Sheet
23 for raffinate in 1967?)

24 MR. LUBEL: Objection, form, speculation.

25 A. The only reason that I can possibly understand

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01 would be for dissemination to customers, and in this
02 case, there was only one customer for raffinate.)

03 Q. (BY MS. HART) All right.)

04 MR. RILEY: Objection, responsiveness.

05 A. Radiator Specialty.)

06 MR. RILEY: Objection, responsiveness.

07 Q. (BY MS. HART) All right.

08 MR. LUBEL: I'll join in that one.

09 MS. HART: Can you mark this as Exhibit
10 3, please. Or Defendant's 1. However you want to do
11 it.

12 (Exhibit 3 marked.)

13 Q. (BY MS. HART) All right. Now, let me show
14 you one more document, Mr. Graeber, and see if you can
15 identify this. Can you tell us what this is?

16 A. It's a form letter that Mr. Bill Souder must
17 have put together for dissemination of Safety Data
18 Sheets and products that were in his jurisdiction.)

19 Q. Okay. Was Mr. Souder the other technical --
20 well, was he employed by USS Chemicals in 1967?

21 A. Yes, he was.)

22 Q. Okay. All right. And did you work with
23 Mr. Souder?

24 A. I worked with him, but not for him.)

25 Q. Okay. Were you aware of an effort within USS

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01 Chemicals to transmit Safety Data Sheets for its
02 products to its customers?

03 A. I was not involved in the effort, but I was
04 aware of the effort.

05 Q. Okay. And what -- what can you tell us about
06 what you knew about that?

07 MR. LUBEL: Objection, form.

08 A. I knew that they were putting together Safety
09 Data Sheets for our products that the MCA, or CMA,
10 depending upon what year it was, did not have Safety
11 Data Sheets established for. We used MCA data -- Safety
12 Data Sheets whenever they were available to cover our
13 products. And --

14 Q. (BY MS. HART) If there was not a --

15 MR. LUBEL: Objection, responsiveness.
16 Nonresponsive.

17 Q. (BY MS. HART) If there was not a CMA Safety
18 Data Sheet available for a particular product that USS
19 Chemicals distributed to customers, what did USS
20 Chemicals do in that circumstance?

21 A. There had been a committee formed for
22 producing Safety Data Sheets, and they were done in
23 accordance with that formulation.

24 Q. Are you -- are you telling us that USS
25 Chemicals prepared Safety Data Sheets for other

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01 products?

02 A. USS Chemicals, I don't believe it had
03 representation on the committee. I think the committee
04 was within USX or U.S. Steel.)

05 Q. Okay. But somebody at the corporation put
06 together some Safety Data Sheets when they couldn't get
07 Safety Data Sheets for particular products from CMA or
08 the MCA, as it was then called; is that correct?

09 MR. LUBEL: Objection, form.

10 A. That's correct.)

11 Q. (BY MS. HART) Okay. And at that point what
12 did USS Chemicals do with the Safety Data Sheets,
13 whether they came from the CMA or whether they were
14 prepared by the corporation?)

15 A. I believe that they distributed by a letter
16 such as this to our customers of those products.)

17 MS. HART: Okay. I'm going to mark this
18 as Exhibit 4.)

19 (Exhibit 4 marked.)

20 Q. (BY MS. HART) Now, Mr. Graeber, when you were
21 responding to some questions by Mr. Lubel, you indicated
22 that you were in -- you worked in a plant, a U.S. Steel
23 plant, in 1959; is that correct?

24 A. I went to work November 16th, 1959, so it was
25 that part of '59 on, and then in 1960 until December.

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01 Q. Okay. So, from November of 1959 until
02 December 1960, you were working in a steel plant called
03 Gary Works; is that right?

04 A. Correct.

05 Q. Okay. After you left Gary Works, were you
06 ever again employed on a daily basis in a plant?

07 A. No.

08 Q. In a production facility?

09 A. No.

10 Q. Okay. Where were -- where did you work? I
11 mean, physically, where did you work? Was it a plant or
12 something else?

13 A. In the office of coal chemical sales, which
14 was in downtown Pittsburgh.

15 Q. Did you regularly handle products -- chemical
16 products, after 1960?

17 A. When you say "handled," you mean disseminate
18 information, develop information?

19 Q. No, no, that's not what I mean. No. No. No.
20 I mean, were you handling, physically handling, or
21 exposed to products on a daily basis, chemical products
22 on a daily basis, in your work in the USS Chemicals
23 division in downtown Pittsburgh?

24 A. No, I was not exposed to products at that
25 point.

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01 Q. Okay. You would go out into plants from time
02 to time; is that right?

03 A. Yes. And it's quite possible I was exposed to
04 them.

05 Q. Okay. But your job was basically an office
06 job; is that -- is that fair?

07 A. An office and an airplane job.

08 Q. Okay. All right. And I just want to ask you
09 one or maybe two questions about the -- I think you
10 referred to some shipping tags that were used by USS
11 Chemicals when it shipped product to customers?

12 A. Yes, I did at the end.

13 Q. All right. Let me ask my question. What was
14 the purpose of putting shipping tags on tank cars and
15 transportation units?

16 A. Oh, I believe federal regulations that came
17 out caused those to come about.

18 Q. Were those shipping tags and things that were
19 physically attached to the shipping container, were they
20 intended for use by the ultimate customer of who was
21 going to receive the product, or were they intended for
22 use during transportation to the ultimate customer?

23 MR. LUBEL: Objection, form.

24 A. I would guess or estimate that it was mainly
25 for use during transportation should anything happen.

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01 Q. (BY MS. HART) All right. You were not
02 responsible or employed in the transportation or
03 shipping departments for USS Chemicals, correct?

04 A. No, I was not.

05 Q. Okay.

06 MR. LUBEL: We'll withdraw our objection.

07 Q. (BY MS. HART) And you were not employed or
08 had any role in industrial hygiene responsibilities at
09 United States Steel Corporation; is that right?

10 A. No, I did not.

11 Q. How about the medical department, did you have
12 any role or responsibilities in that area?

13 A. No, I did not.

14 Q. Are you trained in medicine in any way?

15 A. No, I am not.

16 Q. Are you trained in industrial hygiene?

17 A. No, I am not.

18 Q. Are you trained in toxicology?

19 A. No, I am not.

20 Q. Did you ever have any role or responsibility
21 at United States Steel Corporation, USS Chemicals
22 division of U.S. Steel, for toxicology issues?

23 A. No, I was not.

24 MS. HART: Okay. And I want to make
25 this, our letter -- well, actually, the letter from

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01 Fulbright & Jaworski to plaintiff's counsel dated
02 October 30 regarding the parameters of this deposition
03 also an exhibit.

04 (Exhibit 5 marked.)

05 MS. HART: That's all I have.

06 MR. LUBEL: All right. I've just got a
07 few. Jim, do you want me to go, or do you --

08 MR. RILEY: Go ahead.

09 MR. LUBEL: All right.

10 RE-EXAMINATION

11 BY MR. LUBEL:

12 Q. Where is the letter that your lawyers had? Is
13 it Exhibit Number 4? Is that right, Mr. Graeber?

14 A. Yes.

15 Q. Do you see that letter?

16 A. Yes, I do.

17 Q. And that's a letter where the lawyer for U.S.
18 Steel was trying to get you to say that U.S. Steel was
19 sending out Safety Data Sheets to their customers,
20 correct?

21 MS. HART: Object, form.

22 A. USS Chemicals, and very basically, I state
23 that this was a form letter that was put together for
24 dissemination to customers of products of benzene,
25 toluene and xylene.

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01 Q. (BY MR. LUBEL) Yeah, but that letter is
02 signed, isn't it?

03 A. Yes.

04 Q. Well -- I mean, it's signed by who?

05 A. Bill Souder, manager of light oil products.

06 Q. Well, why would he sign a form letter that's
07 just distributed throughout the company for people to
08 use?

09 MS. HART: Objection, form.

10 A. I cannot really answer that, but if I were to
11 guess at it, I would say that all that needed to be done
12 was to put in "Dear whoever," up there.

13 Q. (BY MR. LUBEL) So you type over the letter --

14 A. By the -- by the salespeople.

15 MR. RILEY: Objection.

16 Q. (BY MR. LUBEL) Okay. Where is the letter
17 from Mr. Souder, at United States Steel Corporation,
18 where he says, "Enclosed please find a form letter that
19 I prepared that people within your department need to
20 send to your customers"? Where is that?

21 A. I haven't got any idea.

22 Q. Did you ever see such a thing?

23 A. I don't know.

24 Q. All right. Now, hold that form letter up
25 there that's got his signature. Would you show -- hold

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01 it up for the videographer?

02 A. (Witness complying).

03 MR. LUBEL: Can you zoom in on that?

04 Q. (BY MR. LUBEL) Now, what happened to the date
05 on that letter?

06 A. I do not know.

07 Q. And it doesn't -- it doesn't show who it was
08 sent to, correct?

09 A. That's correct.

10 Q. And if you look at the version, do you see
11 these black marks and stuff on the document? There
12 is -- it looks like it's either a poor copy or like
13 there has been some -- something covering up some stuff
14 on the document. Do you see that? Do you see these
15 black marks?

16 MS. HART: Objection, form.

17 A. I see the marks, but I haven't got any idea.

18 Q. (BY MR. LUBEL) Okay. And if you'll hold that
19 document back up for the videographer, you'll see that
20 at the bottom it says, "enclosures." Do you see that?

21 A. Yes.

22 Q. Okay. Where is the enclosures?

23 A. I don't know.

24 Q. Okay.

25 A. I think it tells you what is supposed to be

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01 enclosed with it up in the first paragraph.

02 Q. That's right. But it -- but it doesn't have a
03 copy attached to this of what the enclosures should look
04 like? Or what they say?

05 A. That's correct.

06 Q. And have you seen any of the actual letters
07 that allegedly went out to the customers, copies of any
08 of those?

09 A. No.

10 Q. Have you seen lists that were kept by the
11 company that describe who they were sent to?

12 A. No.

13 Q. Anything documented that way?

14 A. My only guess is that this letter, along with
15 numerous copies of each of the Safety Data Sheets, were
16 sent to the district offices, sales offices, who would
17 then send them to "Dear whoever," up here, and -- pardon
18 me.

19 Q. That's all right. Are you okay?

20 A. Send the Safety Data Sheets along with a
21 filled-out copy. But that's just my guesstimate as to
22 what occurred.

23 MR. RILEY: Objection.

24 Q. (BY MR. LUBEL) That's a guess, right?

25 A. That's correct.

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01 Q. And the reason that this strikes me as being
02 kind of awkward is because when you look at the letter,
03 Mr. Souder, who was the manager of the light oil
04 products, he was not the person that would have the
05 relationships with the customer, would he?

06 A. Not the direct contact.

07 Q. It would be people like you?

08 A. No.

09 Q. Who would it be?

10 A. The salesmen and the sales manager.

11 Q. Well, wouldn't you --

12 A. And they were in various districts around the
13 country.

14 Q. Well, wouldn't you think that the letter with
15 the attachments would actually come from the people
16 within United States Steel Corporation that have the
17 relationship with the customer; in other words, they'd
18 be sending a letter? Wouldn't that make the most sense
19 to you?

20 A. I don't think it makes much difference what
21 made the most sense to me. I'm guessing based on what I
22 believe occurred at that particular time.

23 Q. And you don't know what that time is?

24 A. No.

25 Q. All right. How many plants did United States

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01 Steel Corporation have when you started working for them
02 in the '60s?

03 A. That produced coal chemicals?

04 Q. No. Period. Plants. Facilities.

05 A. I have a tough time answering that. I might
06 be able to tell you how many steel production
07 facilities, but plants by itself, no.

08 Q. How many steel production facilities?

09 A. Okay.

10 Q. Roughly?

11 A. I've got to count like this. Nine or 10.

12 Q. But I take it that United States Steel
13 Corporation did more than just steel plants, they had
14 other --

15 A. Oh, yes. But I was trying to count up
16 basically --

17 Q. No, no. I appreciate --

18 A. -- steel production plants.

19 Q. I appreciate you doing that. But you
20 recognized, in 1959, 1960 time period, when you started
21 working there, that it was a rather large corporation,
22 correct?

23 A. Oh, yes.

24 Q. And they had -- they had work that was even in
25 foreign countries, true?

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01 A. At that time, I'm not sure.

02 Q. At some point in time, United States Steel
03 Corporation, their business just didn't encompass the
04 United States, they went into foreign countries?

05 A. Oh, I know that we sold steel at that time in
06 foreign countries.

07 Q. And they were not only just in the steel
08 business, they actually had a chemical division that you
09 worked in?

10 A. It was called the coal chemical sales division
11 originally, and, yes, the export -- U.S. Steel Export
12 Company also would sell to foreign entities. The volume
13 wasn't real great, but --

14 Q. Where did the chemical division do business in
15 the United States?

16 A. Where?

17 Q. Right. Did they do business throughout the
18 United States?

19 A. We had offices throughout the U.S. yes.

20 Q. And approximately how many employees did
21 United States Steel Corporation have at the height of
22 the company's success?

23 A. Oh, I could tell you there were 21,000
24 employees at Gary when I worked there.

25 Q. Just at that one plant?

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01 A. Yes. And I believe the total employees now is
02 probably a little less than that. But I really don't
03 know --

04 Q. Times have changed?

05 A. I would say over 100,000.

06 Q. At the highest point?

07 A. Yes.

08 Q. But not all 100,000 were involved in steel,
09 and not all 100,000 were involved in chemicals, they
10 worked in different areas, correct?

11 A. That's correct.

12 Q. Pretty large, sophisticated company, would you
13 agree, over the years?

14 A. Oh, yes.

15 Q. And definitely had resources to maintain files
16 and records the way big companies ought to keep them,
17 correct?

18 A. I can't even assess that. All I know is what
19 we did with our --

20 Q. All right. We -- the jury is going to see
21 documents that go back to the -- to the 1960s. So
22 somebody decided to keep documents, right? Some
23 documents?

24 A. Apparently, yes.

25 Q. So, my question is, is where are the documents

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01 that show the Safety Data Sheets being sent to the
02 customers? Where are those records?

03 A. I do not know. I have no idea.

04 Q. I mean, you've discussed with us records --
05 you-all have found records that -- that summarize two
06 months' worth of measurements of the raffinate, right?
07 True?

08 A. Yes.

09 Q. You've seen those before, not just today, but
10 they're -- they're historical records, correct?

11 A. Yes.

12 Q. Corporate archive records, they've been kept?
13 Apparently somebody kept them?

14 A. Yes, somebody kept them.

15 Q. So, I'm wondering, if you have any explanation
16 to the jury as to why the company cannot produce to the
17 jury the documents that show the transmittal of these
18 Safety Data Sheets to the customers?

19 A. I have no idea.

20 Q. All right. Now, let's go back and let's talk
21 about the levels of benzene concentrations. And I'm not
22 going to bicker with you. I think we discussed this
23 when -- when I first started asking you questions.

24 It's clear that the benzene, as a component of
25 the raffinate, ranged somewhere, in your mind, between

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01 one and 14 percent, and that's what the studies that you
02 looked at showed, correct?

03 A. Those were during a two-month period, a high
04 and a low.

05 Q. All right. And you didn't have those studies
06 compiled for your review on anything other than a
07 two-month period?

08 A. That's correct.

09 Q. So, you can't tell this jury with any degree
10 of certainty that on another two-month period that it
11 was actually, you know, two percent as opposed to seven
12 percent, the average, you don't know?

13 A. That's correct.

14 Q. You -- but you do feel comfortable saying that
15 the concentration was somewhere between one and 14
16 percent, unless there was a hiccup in the system, true?

17 A. That's correct.

18 Q. And, in fact, we talked about this earlier,
19 we've actually looked at, you've seen this before, the
20 1963 document that was actually sent to Radiator
21 Specialty Company, that says the minimum benzene
22 content, the minimum amount is five percent, you've seen
23 that before?

24 A. I saw that, yes.

25 Q. And that was at a time period where you were

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01 not asking for summaries of what the results were,
02 correct?

03 A. That's correct.

04 Q. So, for instance, for that time period, you'd
05 have to rely on what somebody else was saying, would
06 that be fair?

07 A. That's correct.

08 Q. In other words, whoever wrote that memo, their
09 characterization may be better than yours?

10 A. That was Frank Sedlack, I believe, and he was
11 the manager of technical service, the person whom I
12 reported to.

13 Q. So, you'd trust his results?

14 A. I don't know if that was written as a result.

15 Q. Whatever was written?

16 A. It was written in a -- to me, I don't quite
17 understand the way he used minimum and maximum on there.

18 Q. Well, but you -- you've acknowledged to this
19 jury that the amount of benzene in the raffinate, it
20 varies? It's not --

21 A. Yes.

22 Q. It may not be the same every day, correct?

23 A. That's correct.

24 Q. And you would not expect it to be the same
25 every day of every month, and every month of every year,

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01 correct?

02 A. That is correct.

03 Q. That's just part of the -- some of the
04 uncertainty that goes with that particular unit, right?

05 A. Uh-huh.

06 Q. But one thing we do know is that whatever the
07 uncertainty is, whatever the range is, there was some
08 benzene in the raffinate that went from United States
09 Steel Corporation to Radiator Specialty every day they
10 got it, do you agree with that?

11 A. Yes, I would.

12 MR. LUBEL: That's all I have. Thank
13 you.

14 RE-EXAMINATION

15 BY MS. HART:

16 Q. Mr. Graeber, the -- now, we know that some
17 benzene was in raffinate when it was shipped out,
18 correct?

19 A. Yes.)

20 Q. All right. Now, Exhibit 2, page 2 of Exhibit
21 2, has an analysis over a two-month period of high, low
22 and average, correct, of the benzene composition? The
23 average was what in that particular time period?

24 A. Three percent.)

25 Q. All right. Let me show you another document.)

Transcript of Graeber, James

Graeber, James

Rhyme Trial Master

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01 This is titled, Typical Analysis of Clairton Raffinate,
02 and this shows a benzene composition of five percent, do
03 you see that?

04 A. Yes.

05 Q. Where did this -- do you recognize this
06 particular document?

07 A. I believe I put that together, and it was in a
08 document that described light oil processing and benzene
09 production --

10 Q. Okay.

11 A. -- for the president of USS Chemicals.

12 Q. Okay.

13 A. Who did not have very much knowledge on this
14 subject.

15 Q. All right. Well, now, Exhibit 2 and the
16 analysis attached to it is dated 1977, right?

17 A. Uh-huh.

18 Q. Do you know when this particular document,
19 this particular analysis of Clairton raffinate was
20 prepared?

21 A. When was USS Chemicals formed? Do you know?

22 Q. You can't ask me questions, I'm afraid. I
23 actually do know.

24 MR. LUBEL: Keep asking her. Keep asking
25 questions, would you?

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Graeber, James

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01 A. It was, oh, about -- about a year after USS
02 Chemicals was formed.

03 Q. (BY MS. HART) Okay. Was that in the 1960s or
04 the 1970s?

05 A. '60s.

06 Q. Okay. So, the 1960s time period is what we're
07 talking about; is that right?

08 A. Yes.

09 MR. LUBEL: Do you mind putting a sticker
10 on that?

11 MS. HART: Yeah, I'd be happy to do that.
12 This will be 6, I believe.

13 (Exhibit 6 marked.)

14 Q. (BY MS. HART) Now, as we've -- as you've
15 already testified, the benzene composition in this
16 particular analysis is five percent. Do you know how
17 that number was arrived at?

18 A. I believe I did it in the same way, but not
19 confining it to two months.

20 I think at that time I talked to the
21 laboratory supervisor and just said, okay, look at the
22 information and tell me where -- you know, a good number
23 for a composition, and I can't tell you what time period
24 was involved.

25 Q. Was it longer than a day?

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01 A. Oh, sure.)

02 Q. Longer than a week?

03 A. I would -- I'm positive.)

04 Q. Okay. So this was a multiple-day average of
05 the daily analysis that was done in the lab at Clairton
06 of the components of raffinate; is that fair?

07 MR. LUBEL: Objection, form.

08 A. I would say it's an eyeball average.

09 Q. (BY MS. HART) Okay. But it was over a time
10 period as opposed to one day?

11 A. Yes.)

12 Q. Okay. So in that sense, it was similar to the
13 Exhibit 2 analysis, correct?

14 A. Yes.)

15 Q. Okay. And that average was five percent, in
16 the 1960s, it was and three percent in the 1970s --

17 MR. LUBEL: Objection, form.

18 Q. (BY MS. HART) -- of benzene -- excuse me --
19 benzene composition of raffinate?

20 A. At that time frame.)

21 Q. All right. Have you ever seen an average
22 composition -- average benzene composition in raffinate
23 as high as 14 percent?

24 A. No. If I did, somebody would have had their
25 position changed in the operating unit.)

Transcript of Graeber, James

Graeber, James

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01 Q. Why is that?

02 A. Because the benzene would have been way too
03 high. The object was to make it zero.

04 MS. HART: All right. That's all I have.

05 MR. RILEY: I think I've just got three.

06 And I think I need the microphone again.

07 MR. LUBEL: I've heard that before.

08 MR. RILEY: I'm usually pretty close.

09 MR. LUBEL: Yeah, but yours lead to
10 others asking questions.

11 RE-EXAMINATION

12 BY MR. RILEY:

13 Q. Mr. Graeber, I have to ask you this because
14 I'm unclear about something you said earlier.

15 When you were asked if you ever knew if
16 raffinate was used in Liquid Wrench, is -- what I'm
17 unclear about, and I believe in one of the two or three
18 conversations you had with Radiator Specialty that it
19 was mentioned that raffinate was used in Liquid Wrench;
20 is that correct?

21 A. Yes.

22 Q. Okay. That clears that up. Thank you, sir.

23 The second question is, you've talked at great
24 length about the chemical Safety Data Sheet, which has
25 been marked as Exhibit 3, and you've stated your belief,

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01 but in terms of definite personal knowledge, you're not
02 the one who could say that it definitely was received by
03 Radiator Specialty Company; is that correct?

04 A. That's correct.

05 Q. Thank you. And, finally, sir, in terms of
06 Safety Data Sheets for the employees at the Clairton
07 plant, have you ever seen one?

08 A. Nope.

09 MR. RILEY: That's all I have, sir.
10 Thank you very much.

11 MR. LUBEL: Thank you.

12 VIDEO OPERATOR: This concludes the
13 deposition of Mr. James Graeber. The time is 11:51
14 a.m., and we're off the video record.

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Graeber, James

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01 CHANGES AND SIGNATURE

02 PAGELINE CHANGE REASON

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01 I, JAMES GRAEBER, have read the foregoing
02 deposition and hereby affix my signature that same is
03 true and correct, except as noted above.
04
05

06 _____
07 JAMES GRAEBER
08

09 THE STATE OF _____)
10 COUNTY OF _____)
11

12 Before me, _____, on
13 this day personally appeared JAMES GRAEBER, known to me
14 (or proved to me under oath or through
15 _____) (description of identity
16 card or other document) to be the person whose name is
17 subscribed to the foregoing instrument and acknowledged
18 to me that they executed the same for the purposes and
19 consideration therein expressed.

20 Given under my hand and seal of office this
21 _____ day of _____, _____.
22
23

24 _____
25 NOTARY PUBLIC IN AND FOR
26 THE STATE OF _____
27 COMMISSION EXPIRES: _____
28
29
30
31
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35

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01 CAUSE NO. A-167,693
02 JAMES COWEY AND RUTH) IN THE DISTRICT COURT
03 COWEY)
04)
05 PLAINTIFFS,)
06)
07 VS.) JEFFERSON COUNTY, TEXAS
08)
09 RADIATOR SPECIALTY)
10 COMPANY, ET AL)
11)
12 DEFENDANTS.)
13) 58TH JUDICIAL DISTRICT
14

15 REPORTER'S CERTIFICATION
16 DEPOSITION OF JAMES GRAEBER
17 OCTOBER 31, 2003
18

19 I, Mark A. Miller, Certified Shorthand Reporter in
20 and for the State of Texas, hereby certify to the
21 following:

22 That the witness, JAMES GRAEBER, was duly sworn by
23 the officer and that the transcript of the oral
24 deposition is a true record of the testimony given by
25 the witness;

26 That the deposition transcript was submitted on
27 _____ to the witness or to the attorney
28 for the witness for examination, signature and return to
29 me by _____;

30 That the amount of time used by each party at the
31 deposition is as follows:

32 MR. LUBEL.....01 HOURS:56 MINUTE(S)

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01 MR. RILEY.....00 HOURS:09 MINUTE(S)

02 MS. HART.....00 HOURS:29 MINUTE(S)

03 That pursuant to information given to the
04 deposition officer at the time said testimony was taken,
05 the following includes counsel for all parties of
06 record:

07

08 FOR THE PLAINTIFFS:

09 MR. LANCE LUBEL

10 HEARD, ROBINS, CLOUD, LUBEL & GREENWOOD

11 910 TRAVIS STREET, SUITE 2020

12 HOUSTON, TEXAS 77002

13

14 FOR THE DEFENDANTS UNITED STATES STEEL CORPORATION,

15 ARISTECH CHEMICAL CORPORATION AND USX CORPORATION:

16 MS. LAURA CALLAWAY HART

17 NELSON, MULLINS, RILEY & SCARBOROUGH

18 1330 LADY STREET

19 COLUMBIA, SOUTH CAROLINA 29201

20

21 FOR THE DEFENDANT RADIATOR SPECIALTY COMPANY:

22 MR. JAMES M. RILEY

23 COATS ROSE

24 1001 FANNIN, SUITE 800

25 HOUSTON, TEXAS 77002-6707

26 I further certify that I am neither counsel for,
27 related to, nor employed by any of the parties or
28 attorneys in the action in which this proceeding was
29 taken, and further that I am not financially or
30 otherwise interested in the outcome of the action.

31

32

33

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Graeber, James

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01 Further certification requirements pursuant to Rule
02 203 of TRCP will be certified to after they have
03 occurred.

04 Certified to by me this 2ND of NOVEMBER, 2003.

05

06

07

08

Mark A. Miller

09 Texas CSR No. 1190

10 Expiration Date: 12/31/04

11

12 Nell McCallum & Associates

13 Firm Registration No. 243

14

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01 FURTHER CERTIFICATION UNDER RULE 203 TRCP

02 The original deposition was/was not returned to the
03 deposition officer on _____;

04 If returned, the attached Changes and Signature
05 page contains any changes and the reasons therefor;

06 If returned, the original deposition was delivered
07 to _____, Custodial Attorney;

08 That \$_____ is the deposition officer's
09 charges to the Plaintiff for preparing the original
10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
12 with Rule 203.3, and that a copy of this certificate was
13 served on all parties shown herein on and filed with the
14 Clerk.

15 Certified to by me this _____ day of
16 _____, 2003.

17

18

19

20

Mark A. Miller

21

Texas CSR No. 1190

22

Expiration Date: 12/31/04

23

24

Nell McCallum & Associates

25

Firm Registration No. 243

26

27

28

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Exhibit 3

Transcript Report

Keenan, Thomas

Plaintiffs' designations are in yellow. No counter-designations or objections were received.

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Full Transcript Report

Designation Legend

KEENAN - (THOMAS) VOL 1

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Keenan, Thomas

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01 SUPERIOR COURT OF THE STATE OF CALIFORNIA
02 FOR THE COUNTY OF ALAMEDA

03

04 JIMMY THOMAS and : NO. RG17882514

05 SONYA THOMAS :

06 :

07 Plaintiffs :

08 :

09 v. :

10 :

11 AKZO NOBEL COATINGS, :

12 INC., et al., :

13 :

14 Defendants. :

15

16 - - -

17 June 7, 2019

18 - - -

19

20 Videotaped Oral Deposition of THOMAS KEENAN, as

21 Person Most Qualified - Ashland, LLC, taken pursuant

22 to Notice, at the EVEN Hotel Sarasota, 6231 Lake

23 Osprey Drive, Sarasota, Florida 34240, beginning at

24 11:05 a.m. before Mary Ann Smith, RPR, RMR, and Notary

25 Public.

26 - - -

27

28

29 VERITEXT LEGAL SOLUTIONS

30 MID-ATLANTIC REGION

31 1801 Market Street, Suite 1800

32 Philadelphia, Pennsylvania 19103

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Page 2

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Transcript of Keenan, Thomas

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Page 3

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20
21 ALSO PRESENT
22
23 LAJUANA PRUITT, Videographer
24
25 BENJAMIN NEATE, Video Technician
26
27
28
29
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01 P R O C E E D I N G S

02 THE VIDEOGRAPHER: We are now on the record.

03 Please note that the microphones are
04 sensitive and make pick up whispering and private
05 conversations. Please turn off all your cell
06 phones or place them away from the microphones as
07 they can interfere with the deposition audio.
08 Recording will continue until all parties agree
09 to go off the record.

10 My name is Lajuana Pruitt, representing
11 Veritext. The date today is June the 7th, the
12 year 2019, and the time is approximately
13 11:05 a.m. This deposition is being held at 6231
14 Lake Osprey Drive in Lakewood Ranch, Florida, and
15 is being taken by counsel for the plaintiff.

16 The caption of the case is Thomas versus
17 Akzo. The case is filed in the Superior Court of
18 the State of California for the County of
19 Alameda. The case number is RG17882514. The
20 name of our witness is Tom Keenan.

21 At this time will all attorneys please -- the
22 attorneys present please say who you -- identify
23 who you are and those remotely please identify
24 who you are and the parties you represent.

25 MR. SAYRE: So here in the room is Mark

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01 Sayre. I represent Ashland.

02 THE VIDEOGRAPHER: Gentlemen.

03 MR. DUPONT: Andrew DuPont, on behalf of

04 Jimmy and Sonya Thomas.

05 MR. TCHENG: And on the phone this is Michael

06 Tcheng, for Berg Lacquer Company.

07 MR. FONSECA: Freddy Fonseca, for W.M. Barr

08 Companies, Inc. I'm on the phone as well.

09 MR. LO: Philip Lo, on behalf of The Savogran

10 Company.

11 MR. FRANCK: Herman Franck, for East Bay

12 Color.

13 THE VIDEOGRAPHER: Will our court reporter,

14 Mary Ann Smith, please swear our witness.

15 THOMAS KEENAN, called as a witness by the

16 Plaintiffs, having been first duly sworn, testified as

17 follows:

18 THE WITNESS: I do.

19 MR. SAYRE: And before we get started,

20 counsel for the plaintiff myself, Mark Sayre, had

21 a conversation and counsel for the plaintiff had

22 asked me to make a statement at the beginning of

23 the deposition with regard to the deposition so I

24 would be happy to do that.

25 I have in front of me the Defendant Ashland

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01 LLC's, objection to plaintiffs' notice of taking
02 deposition of the person most qualified directed
03 to defendant Ashland, LLC, and in brackets Thomas
04 Keenan. Mr. Keenan -- excuse me. Dr. Keenan is
05 here to testify. We have gone through the
06 notice. This notice of objection goes through
07 each category and provides legal objections.

08 We have met with Dr. Keenan yesterday and
09 we've determined that he has knowledge with
10 regard to categories 20 -- let me make sure of
11 this. 27 -- just confirm. 27, 30, and 31. We
12 will rely on our objections to the other
13 categories and we would be happy to meet and
14 confer at another time with Mr. DuPont concerning
15 those other categories, but for the purposes of
16 today in this deposition he's being offered and
17 he has knowledge with regard to those categories.

18 And I will make as an exhibit to the
19 deposition a copy of the notice of objection that
20 I mentioned. Just as a housekeeping matter, the
21 copy I have in front of me is highlighted so I
22 don't want to use that, but if it's all right
23 with all parties including the plaintiff, I would
24 be happy to provide the reporter a digital copy
25 so she can attach that.

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01 MR. DUPONT: That's agreeable.

02 MR. SAYRE: We're good to go.

03 (Defendant's Exhibit No. 1 was marked for
04 identification.)

05 DIRECT EXAMINATION

06 BY MR. DUPONT:

07 Q. Would you give us your full name, please.

08 A. Sure. My full name is Thomas Harry Keenan.

09 Q. Dr. Keenan, you have a Ph.D.; is that
10 correct?

11 A. That's correct.

12 Q. And you are testifying here on behalf of
13 Ashland, LLC?

14 A. On behalf of Ashland, yes.

15 Q. And you understand that your testimony here
16 today is binding upon Ashland as its representative?

17 MR. SAYRE: Objection to form. You can
18 answer.

19 A. That's my understanding, that I'm
20 representing Ashland in this deposition.

21 Q. And you have done this on at least two
22 occasions in the past where you've been asked to
23 testify as a representative of Ashland?

24 A. Yes.

25 Q. We're taking this deposition remotely and

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(THOMAS) VOL 1

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01 speaking to each other over the phone, so if at any
02 point in time I ask you a question and you do not
03 understand it, would you please tell me that?

04 A. I will.

05 Q. And if you answer a question, will you agree
06 that you answered it because you both heard it and
07 understood it?

08 A. Yes.

09 Q. We need to do our best to not speak over each
10 other so that the court reporter can write everything
11 down that we are both saying, so would you please
12 allow me a little time to finish my questions before
13 you begin your response?

14 A. I will.

15 Q. And you are generally familiar with
16 deposition procedures based on your experiences in the
17 past?

18 A. I am.

19 Q. So would you begin, please, by describing
20 your employment dates and positions that you've held
21 with Ashland?

22 A. Okay. I started with Ashland in December of
23 1989 as a toxicologist. I continued working there
24 until I retired on December 31, 2014. During that
25 time period, the first five to ten years I was

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(THOMAS) VOL 1

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01 primarily doing toxicology support as consulting
02 services, but also supporting MSDS and label creation.
03 After that I became more -- got more responsibilities,
04 I added industrial hygiene, more MSDS preparation.

05 During the 2000s I had some responsibility
06 for environmental health and safety in a broader
07 context. In 2011 I was over in Europe for a while
08 managing our European environmental health and safety
09 group and when I came back I managed the environmental
10 health and safety and this is including MSDS and label
11 production for our water treatment chemical company.
12 And then my last few months that I was at Ashland I
13 was helping get that company ready for sale to another
14 entity and then I retired.

15 Q. Have you had an opportunity to prepare for
16 your deposition today?

17 A. I have.

18 Q. And what did you do to prepare?

19 A. I met with counsel yesterday and then I also
20 reviewed prior a deposition.

21 Q. Which prior deposition?

22 A. It was con -- I think it's Cacoilo. Cacoilo.
23 I can't pronounce the name, but it's something like
24 that. It was in 2016.

25 Q. It was in the Milton Cacoilo case?

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(THOMAS) VOL 1

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01 A. Yes.

02 Q. And that's C-a-c-o-i-l-o for the record.

03 Other than the transcript of your deposition
04 in the Cacoilo case, did you review any other
05 documents in order to prepare for your deposition?

06 A. I did not actually observe any other
07 documents. We discussed documents, but we did not --
08 I did not look at them.

09 Q. What documents did you discuss?

10 MR. SAYRE: I'm going to object on the basis
11 of attorney-client privilege. Obviously the
12 communications themselves are privileged. So
13 instruct him not to answer that question.

14 Any question that does not call for the
15 communication between a client and an attorney is
16 obviously fair game. It's just you can't ask him
17 about the conversation.

18 Q. Did you see the documents that were
19 discussed?

20 A. No, I did not.

21 Q. What is your understanding as to what you
22 will be testifying about here today?

23 A. My understanding, I will be probably a little
24 bit broader than what the statements say, but
25 essentially the health hazards of benzene and

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01 benzene-containing solvents and benzene composition in
02 solvents. And Ashland's knowledge during that time
03 period.

04 MR. SAYRE: I'm sorry. I'm sorry, Counsel.
05 He hadn't finished his answer.

06 A. I added something and, unfortunately, I was
07 adding it just as you were starting to talk. It was
08 adding the perspective and Ashland's knowledge of
09 those issues.

10 Q. All right. So, in addition to the topics of
11 the health hazards of benzene and the benzene content
12 of solvents, you understand that you're testifying
13 about Ashland's knowledge of the health hazards of
14 benzene?

15 MR. SAYRE: I'm going to object to the
16 question. It misstates testimony.

17 You can answer.

18 A. My perspective is I'm going to be testifying
19 as to what Ashland knew during certain time periods
20 about the health hazards of benzene.

21 Q. During what time periods?

22 A. Depends on -- well, I will be able to cover,
23 I think, most of the time period that's relevant.

24 Q. And what is your understanding of what that
25 time period that is relevant?

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01 MR. SAYRE: I'm going to object to this
02 question and the line of questioning on the basis
03 that it calls for speculation as to what you want
04 to ask. He's going off the notice of the
05 deposition, so he's trying to restate what's in
06 your notice, which is unfair to the witness.
07 Obviously if you have questions concerning these
08 matters, please ask them, but his understanding
09 is irrelevant.

10 You can answer.

11 A. I'm not certain what the time period is. I
12 mean, we mentioned it yesterday. I vaguely remember
13 it was late '60s, early '70s, something like that,
14 until '90s or 2000s. I can't remember.

15 Q. Have you ever conducted an investigation into
16 what Ashland knew about the health hazards of benzene
17 in the 1960s and the 1970s?

18 A. And I would -- I'm not sure what you mean by
19 investigation. Could you be a little bit --

20 Q. You began to work for Ashland in 1989;
21 correct?

22 A. That's correct.

23 Q. So you were not employed by Ashland in the
24 1960s and 1970s; right?

25 A. That is correct.

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01 Q. And you understand that we're -- I've asked
02 to question somebody on behalf of Ashland about what
03 Ashland knew about the health hazards of benzene,
04 including in the period of the 1960s and 1970s;
05 correct?

06 A. Yes. That's what you're asking, yes.

07 Q. So have you done anything to obtain
08 information about what Ashland knew about the health
09 hazards of benzene in the 1960s and 1970s?

10 A. Not specifically for today, but while I was
11 still an employee before I retired I have had
12 interviews with people who were working during that
13 time period, plus I would have gained knowledge of
14 some of the procedures during that time period before
15 I started just because of what I was doing, but I also
16 specifically sought out people that were responsible
17 during that time period to gain knowledge about
18 benzene manufacturer and what the company knew about
19 benzene health hazards during that time period.

20 Q. So the first thing you told me that you did
21 was to interview employees who were with Ashland from
22 the '60s and '70s?

23 A. That were responsible for some of these
24 areas, yes. Some of them may not have been directly
25 responsible, but had a history at that time. A lot of

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01 them were retirees by the time I interviewed them.

02 Q. Who did you interview?

03 A. I may not be all inclusive because it's been
04 some time ago, but my memory is Dick Toeniskoetter,
05 who I was reporting to when I first was hired on. He
06 covered from the early '70s until '93 as responsible
07 for environmental health and safety.

08 Prior to that there was Jack Sweet. Jack was
09 responsible from the late '60s until into the early
10 '90s for the labeling system for the distribution
11 company.

12 I interviewed Scotty Patrick. Scotty was,
13 when I interviewed him, was an executive vice
14 president of Ashland, but he was responsible for the
15 manufacturer of benzene. He helped put some of the
16 systems in place in the Catlettsburg refinery.

17 Ernie Purdue, who was the technician at the
18 Catlettsburg refinery who did a lot of analytical
19 analysis of the benzene being produced. And Buddy
20 Whitlock, who was in our distribution business and he
21 was responsible for the technical specifications for
22 the distribution products.

23 I may have left some others off, but that's
24 my memory right now of who I interviewed in the past.

25 Q. The first gentleman's name who you gave me

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01 was --

02 A. Dick Toeniskoetter.

03 Q. -- Dick Toeniskoetter?

04 A. Yes.

05 Q. How do you spell his last name?

06 A. All right. It's been a while. I'll try.

07 T-o-e-n-i-s-k-o-e-t-t-e-r.

08 Q. And what did you learn from -- well, let's
09 back up. Let's go in chronological order here.

10 What were Scotty Patrick's years of
11 employment at Ashland?

12 A. I don't know when he started. He retired, I
13 believe, in the 2000s some time. I don't know the
14 exact time period of his employment.

15 Q. What were Ernie Purdue's years of employment
16 at Ashland?

17 A. Once again, I'm not going to be able to cite
18 starting dates and ending dates. Ernie would have
19 retired before Scotty, but probably in the '90s I
20 would assume.

21 Q. Another thing you said that you did to learn
22 about what Ashland's activities and knowledge about
23 benzene were in the 1960s and 1970s was to seek out
24 people who had responsibility in the area. Is that
25 the same as your interviews with the five people that

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01 you listed for me or was that something different than
02 interviewing them?

03 MR. SAYRE: I'll object to the form of the
04 question.

05 And, Counsel, by the way, when I object to
06 the form I do that shorthand so that it doesn't
07 interrupt your deposition, but if you need a
08 basis for the objection to correct your question,
09 if you want to know it, please ask and I'd be
10 happy to provide. Is that agreeable?

11 MR. DUPONT: Yes.

12 MR. SAYRE: Go ahead.

13 A. The people that I interviewed were
14 responsible for a lot of this area. That's the reason
15 why I interviewed them.

16 BY MR. DUPONT:

17 Q. All right. So when you generally told me
18 about seeking out people who had responsibility to
19 talk to, those are the five people that you've told me
20 about, there's no additional people I need to ask you
21 about?

22 A. Well, none that I recall at this point.
23 We're talking at least almost ten years ago or more
24 that I did this activity.

25 Q. So it's your estimation that these interviews

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01 that you conducted were approximately ten or more
02 years ago?

03 A. Yes.

04 Q. Did you create any type of notes or
05 memorandum as the result of or during the course of
06 these interviews?

07 A. No, I didn't.

08 Q. Did you read the transcripts of depositions
09 given by other Ashland employees or former employees
10 in order to learn about Ashland's historic activities
11 and knowledge?

12 MR. SAYRE: Objection to form.

13 A. Yes. I've read depositions from some of
14 these individuals, yes.

15 Q. Which depositions did you read?

16 A. I don't recall. I mean, it's been a long
17 time.

18 Q. Did you keep any file of materials that you
19 have reviewed or relied upon in order to testify on
20 behalf of Ashland?

21 A. I have not personally kept a file.

22 Q. Has a file been kept by Ashland or its
23 attorneys with that information?

24 MR. SAYRE: Objection. Calls for
25 speculation, lacks foundation. You can answer.

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01 A. There was information in a file when I was
02 employed at Ashland. I cannot tell you whether it
03 still exists or not.

04 Q. What was the name of that file?

05 A. It was just Benzene.

06 Q. Through your interviews did you learn about
07 Ashland manufacturing benzene?

08 A. I did.

09 Q. What did you learn?

10 A. I learned that we first started to
11 manufacture benzene in 1958 at the Buffalo refinery,
12 and in 1961 we also started producing benzene in
13 Catlettsburg, Kentucky. We were using what was called
14 the UOP process and that was -- we only used the UOP
15 process at the Buffalo refinery and we used -- what
16 was it.

17 Something started -- it was a deacylation
18 process that was used and it's HYD. I can't -- I
19 can't remember the name of the process that we used at
20 Catlettsburg, but it used a separate stream from the
21 UOP process and it was more efficient than the UOP
22 process.

23 Q. Did Ashland manufacture benzene at any
24 facility other than the Buffalo refinery and
25 Catlettsburg refinery?

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01 A. No. Those are the only two locations Ashland
02 manufactured benzene.

03 Q. And Ashland began to manufacture benzene at
04 the Buffalo refinery in 1958?

05 A. That's my recollection, yes.

06 Q. Until what year did Ashland continue to
07 manufacture benzene at the Buffalo refinery?

08 A. I don't know the answer to that. They
09 decommissioned the Buffalo refinery before I got there
10 and I don't know when that occurred.

11 Q. Do you know by decade when Ashland stopped
12 manufacturing benzene at the Buffalo refinery?

13 A. It would be a guess by me at this point. I
14 don't know. I know the refinery had been shut for
15 some time when I got there in '89.

16 Q. Ashland began to manufacture benzene at the
17 Catlettsburg refinery in 1961?

18 A. That's correct.

19 Q. And that was Catlettsburg, Kentucky?

20 A. Yes.

21 Q. Until what year did Ashland manufacturer
22 benzene at the Catlettsburg, Kentucky refinery?

23 A. It's my understanding they quit manufacturing
24 in 1989 or late '80s. It might have been earlier than
25 '89, but sometime in that time period.

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01 Q. Do you know why Ashland stopped manufacturing
02 benzene at the Catlettsburg refinery?

03 A. No, I do not know the reason.

04 Q. What did Ashland do with the benzene that was
05 manufactured at the Buffalo refinery?

06 A. My understanding is that it was all corporate
07 accounts and they put it into tankers on the lake and
08 I believe it went to Dow primarily.

09 Q. When you say corporate account, describe to
10 me what you mean?

11 A. Large accounts using large volumes of this
12 material. Neither refinery had drumming capabilities
13 so everything that was manufactured there was shipped
14 in bulk. So barge and tanker quantities.

15 Q. So the Buffalo Ashland refinery shipped
16 benzene by barges that navigated on water as one
17 method?

18 A. Tankers. Because Lake Erie, Lake Ontario.

19 MR. SAYRE: Objection. Misstates testimony.
20 To the last question.

21 Q. Did the Buffalo Ashland refinery distribute
22 benzene on railroad cars?

23 A. Not to my understanding.

24 Q. Did the Ashland Buffalo refinery distribute
25 benzene in truck tanks?

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01 A. That's not my understanding. What I was
02 informed was that it was all by tanker.

03 Q. What did Ashland do with the benzene that was
04 manufactured at the Catlettsburg, Kentucky refinery?

05 A. My understanding there it was all barge
06 shipments on the Ohio River and one of the customers,
07 I don't know all of them, but the one that I remember
08 is Hooker.

09 Q. The company was Hooker?

10 A. Yes.

11 Q. What type of company was Hooker?

12 A. I'm sorry. It was a chemical company, but I
13 don't know what they were doing with the benzene.

14 Q. Did Ashland also distribute benzene that was
15 manufactured by other companies?

16 A. Yes.

17 Q. During what periods of time did Ashland
18 distribute benzene manufactured by other companies?

19 A. My understanding is that we were -- did
20 drumming operations of benzene from late '60s, early
21 '70s until about 1977.

22 Q. And who was it that told you -- or what was
23 your source of information that Ashland was in the
24 business of drumming benzene for distribution --
25 strike that.

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01 When you're saying drumming benzene, you mean
02 taking benzene and putting it into 55 gallon drums and
03 shipping it out to customers?

04 A. That's one of the possible -- yes, that was a
05 possibility. They could have also been doing other
06 things with it, but, yes, drumming operations and
07 specifically saying they're taking it from bulk and
08 putting it into 55-gallon drums.

09 Q. Did Ashland distribute other companies'
10 manufactured benzene using containers other than
11 55-gallon drums?

12 A. I don't know the answer to that.

13 Q. Did Ashland have a business that involved
14 blending chemicals on behalf of other companies?

15 A. Yes.

16 Q. During which years did Ashland blend
17 chemicals on behalf of other companies?

18 A. Well, we first acquired a distribution
19 business in 1956 and we sold the distribution business
20 in 2011. So, during that time period, if requested by
21 a customer, we would blend solvents for them.

22 Q. What was the name of the distribution
23 business that Ashland acquired in 1956?

24 A. I think it was Brunoco, B-r-u-n-o-c-o. I
25 think that's right, but I'm not a hundred percent sure

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01 about that. Might have been JW Brown or JT Brown or
02 something like that. There were several companies
03 that they acquired. I don't remember the name of the
04 first one.

05 Q. Where were Ashland's benzene distribution
06 operations located?

07 A. Well, there were a lot of distribution sites.
08 There were 20 to 30 distribution sites across the
09 country and I don't know which ones handled benzene.
10 And it would vary depending upon the time period and
11 what the customers were requesting. If there was no
12 customer in the area that wanted benzene that facility
13 would not have benzene on site. It was all
14 customer-driven demand.

15 Q. And which areas of the country -- strike
16 that.

17 Where were Ashland's blending operations
18 located?

19 A. Well, most of the distribution sites had
20 blending capabilities. So most of the sites would
21 have it.

22 Q. Did Ashland blend benzene with other
23 chemicals on behalf of its customers?

24 A. I don't have any specific knowledge of that
25 so I can't say one way or the other. I do know we

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01 sold benzene in drums, but that's all that I remember
02 at this point.

03 Q. Have you ever undertaken to determine who
04 Ashland's customers were that it blended product on
05 behalf of that included benzene as an ingredient?

06 MR. SAYRE: Object to the question as calling
07 for speculation. I think he just said he didn't
08 know one way or the other.

09 You can answer.

10 A. I have not conducted an investigation trying
11 to ascertain if Ashland blended benzene with other
12 solvents or, if they did, who their customers would
13 have been.

14 Q. When Ashland blended products containing
15 benzene as an ingredient on behalf of its customers,
16 do you know who determined what the formula for the
17 products would be?

18 A. Could you repeat that. I'm not sure I got it
19 all.

20 Q. Sure. When Ashland blended products
21 containing benzene on behalf of its customers, do you
22 know who made the decision as to what the formula of
23 the product would be?

24 MR. SAYRE: I'm going to object to the
25 question. It calls for speculation.

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01 Maybe I misunderstood. I thought he said
02 that he didn't know if Ashland blended for
03 customers. But that's my objection.

04 You can answer.

05 A. What I said was I didn't know if they blended
06 benzene for customers. We did blend for customers and
07 my understanding is it was all based upon their
08 formulas as what they wanted in the product and then
09 Ashland would follow their guidance as far as if they
10 wanted 50 percent acetone and 50 percent ethanol we
11 would do that for them. But that would be driven from
12 them and not Ashland putting that product together and
13 saying, we've got this for sale. We wouldn't be able
14 to anticipate what their needs were in these solvents.

15 Q. What is your basis for that answer?

16 A. Well, my basis is for at least working with a
17 company for at least 15 years or around 15 years while
18 the distribution business was there and understanding
19 what the business model was. It wasn't that they were
20 developing and designing products. That was just not
21 what that business was all about. It was about
22 providing solvent blends or solvents, pure solvents,
23 to customers and not to develop unique products.

24 Q. Have you spoken with anybody or seen any
25 documents that describe how the decision was made

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01 about what the formula would be for products that were
02 blended by Ashland on behalf of customers in the '60s
03 and '70s?

04 A. I've seen -- no. If I'm understanding the
05 question right, you're asking me if I've seen
06 information from customers specifying what the blends
07 would be. Is that what you asked me?

08 MR. SAYRE: Is that right, Counsel?

09 Q. No. Let me back up. And thank you for
10 asking me to clarify that.

11 You told me that your answer as to who made
12 the decision about what a formula for the product that
13 Ashland blended would be was based on your experience
14 of about 15 years working with Ashland; is that right?

15 A. With Ashland distribution being part of the
16 company, yeah. They were -- there from '89 when I
17 started until 2011, so that's 12 years. But, yes,
18 during that time period I understood the business
19 model.

20 Q. And are you assuming that Ashland had the
21 same business model in the 1960s and 1970s in terms of
22 how the decision was made on what the formula of a
23 blend made by Ashland would be?

24 MR. SAYRE: Objection to the form of the
25 question as to assume. You can answer.

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01 A. Well, I have no direct knowledge during that
02 time period, but it would make sense -- it would not
03 make sense, to me anyway, that they would have had a
04 different model prior to that just because it's a very
05 simple business model. They source chemicals from
06 other manufacturers and they provide it based upon the
07 customer demand or request.

08 And so they have sources, they know what some
09 of the solvents are that are high volume as far as
10 what customers in that area need, so they'd require
11 that. But if there was specific things that were
12 requested by a customer for, in the situation of a
13 blend, that was not something Ashland created on its
14 own. The customer would say, can you blend A, B, C
15 together and Ashland would do that. And the customer
16 would specify the concentrations of each component.

17 Q. Has anybody told you how the decision was
18 made in the 1960s and 1970s as to what the formula for
19 a blend of product blended by Ashland on behalf of the
20 customer would be?

21 MR. LO: Objection. Calls for speculation.

22 This is Phillip Lo.

23 MR. SAYRE: Do we have an agreement that one
24 objection is good for all?

25 MR. DUPONT: One objection by a defendant is

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01 good for all defendants.

02 MR. SAYRE: Thank you, Counsel.

03 MR. LO: Thank you.

04 MR. SAYRE: Do you have the question in mind?

05 A. Could you repeat the question, please.

06 BY MR. DUPONT:

07 Q. Yeah. What I'm just trying to learn is, did
08 anybody tell you how the decision was made about what
09 chemicals would go into a blend that Ashland made for
10 a customer during the 1960s and 1970s?

11 A. I did not specifically ask anyone that
12 question, no. I'm sorry?

13 Q. Were you finished your response?

14 A. I don't remember what I was going to say.

15 MR. SAYRE: You said something about
16 documents. Or he did.

17 THE WITNESS: He did. I didn't say
18 documents.

19 MR. SAYRE: All right. Next question.

20 BY MR. DUPONT:

21 Q. Have you seen any documents that provided you
22 with information about how the decision was made on
23 what chemicals would go into a blend made by Ashland
24 for a customer in the '60s and '70s?

25 A. No, I have not seen documents that would --

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01 that cover that area.

02 Q. When Ashland blended products on behalf of
03 the customer in the '60s and '70s, who made the
04 decision about what warning information would be
05 provided for the blend?

06 DEFENSE COUNSEL: Calls for speculation.

07 A. During the '60s and '70s there was -- the
08 requirement for hazard warnings was not there. The
09 labeling, Ashland labeling started -- well, they
10 stenciled the name of the product and the company on
11 the labels, sorry, on the drums up until about 1970,
12 '69, '70. At that time period they implemented a
13 labeling program which provided information on the
14 chemical name, the logo of the company. And if there
15 was some specific guidance from trade associations or
16 other agencies at that time period, they would put
17 that information on.

18 I think '71 might have been about the start
19 of that with the federal Hazardous Substance Labeling
20 Act for certain select -- I think there's 30 chemicals
21 total. And even that was focused on consumer products
22 and not industrial products such as these.

23 So during that time period there wasn't
24 really specific requirements, but Ashland was
25 providing labels and also started to provide MSDSs in

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01 the late '60s and during the '70s. The MSDS
02 requirement, as I understand it, didn't really come
03 about until 1985.

04 Q. So once Ashland began to provide labeling
05 information and MSDS for chemicals, at least for some
06 chemicals in 1969, 1970 going forward, was it Ashland
07 that determined what language would go on to a label
08 for an MSDS?

09 A. Not at the beginning because a lot of that
10 was -- there was documents out there from National
11 Safety Counsel, from Manufacturing Chemists'
12 Association, from the American Petroleum Institute
13 which selected chemicals. They provided
14 recommendations as to what labels should look like or
15 hazard warnings and they produced documents that were
16 also could be provided upon request to customers
17 during that time period.

18 It was probably in the early '70s -- well, in
19 late '60s that Ashland was starting to also develop a
20 hazard determination procedure and to provide MSDSs
21 and labels, which some of those products would have
22 been Ashland coming up with the recommendations for
23 warnings, but some of it would be relied upon trade
24 associations and other agencies too.

25 Q. In what year did Ashland first provide a

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01 label with warning information on a container that had
02 benzene in it that it sold to a customer?

03 A. I don't know the exact date, but I think it
04 was around '71.

05 (Telephone interruption.)

06 MR. SAYRE: May we take a short break?

07 THE WITNESS: Yeah, we need to take a break.
08 I'm sorry.

09 THE VIDEOGRAPHER: We're going off the record
10 at 11:48.

11 (Recess from 11:48 a.m. to 11:59 a.m.)

12 THE VIDEOGRAPHER: We're back on the record.

13 The time is 11:59 a.m.

14 BY MR. DUPONT:

15 Q. Dr. Keenan, before the break we began
16 discussing when Ashland started putting a label on
17 benzene that is distributed to customers, and you told
18 me that the year was 1971 when that started?

19 A. It was around 1971, yes. I don't know
20 whether that's the exact date, but that's the time
21 period that I recall.

22 Q. Before 1971, when Ashland sold benzene to a
23 customer did it provide any type of information off of
24 a label about the health hazards of benzene?

25 A. My understanding is that if a customer

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01 requested information that there was information
02 available such as the document from the American
03 Petroleum Institute and the document from -- yeah, and
04 document from the Manufacturing Chemists' Association
05 at that time period also.

06 Q. What document from the American Petroleum
07 Institute did Ashland provide to a customer if the
08 customer requested information on benzene before 1971?

09 A. There was that report in 1960, I think it
10 was, from Drinker. I think it was Drinker. And then
11 Manufacturing Chemists' Association also put almost
12 like a MSDS, but not per se, and I think 1960 was
13 about the date on that one also.

14 Q. Was the American Petroleum Institute 1960
15 document by Drinker the API Toxicological Review
16 Benzene?

17 A. Without having it in front of me I can't say
18 that for certain, but I think that was the title.

19 Q. And why was it only provided, that document,
20 to a customer if the customer requested it?

21 MR. SAYRE: Objection to form.

22 A. Could you repeat it because somebody joined
23 in and I didn't hear the full question.

24 Q. Why did Ashland only provide its customers
25 with the API 1960 toxicological review for benzene

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01 when a customer requested it?

02 MR. SAYRE: Objection to form.

03 Argumentative. You can answer it.

04 A. I don't know the answer to that.

05 Q. Why did Ashland not automatically send
06 customers the API toxicological review on benzene from
07 1960 when it shipped benzene to them?

08 MR. SAYRE: Same objection. Same basis.

09 A. At that time period there was no requirements
10 to provide information on products and so I can't
11 answer one way or the other. I have no -- I don't
12 know why the decisions not to send it or send it were
13 made in that time period.

14 Q. When you say there was no requirement to
15 provide that type of information to customers in that
16 time period, what requirement are you referring to?

17 A. There was no requirement, so that's what I
18 was referring to. I'm not aware of any legal
19 requirements to provide that information along with
20 products in that time period.

21 Q. When you say legal requirement -- I
22 apologize. When you say legal requirements, are you
23 talking about a law requiring that Ashland provide
24 information on the health hazards of benzene?

25 MR. SAYRE: Objection to form.

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01 A. During that time period, 1960s and '70s,
02 there was no requirement for that, that's correct.

03 Q. At some point in time did a law come into
04 place that did require Ashland to provide information
05 on the health hazards of benzene?

06 A. Yes.

07 Q. When was that?

08 A. I think it was published in '84 and the
09 requirements started in '85 for internal employees,
10 and '85, '86 for external. For customers.

11 Q. Did Ashland provide information on the health
12 hazards of benzene at some time before 1971 and 1984?

13 A. You mean from the time period '71 to '84?

14 Q. Yes.

15 A. Yes. Yes, we did.

16 Q. So at some point Ashland decided, before
17 there was a law in place requiring it to provide
18 information to customers, that it would provide health
19 hazard information on benzene?

20 A. Benzene and other products we sold, yes.

21 Q. So why was the decision made in 1971 to start
22 providing information on the health hazards of
23 benzene?

24 MR. SAYRE: Objection to form.

25 A. I don't know the answers to what the thought

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01 process was to implement the hazard communication
02 system that they did in the late '60s, early '70s, but
03 that decision was made and they continued to provide
04 that information through when the hazard communication
05 standard was implemented in the '80s.

06 Q. Did the API toxicological review of 1960
07 provide the reader with information about leukemia
08 resulting from exposure to benzene?

09 A. I don't -- I can't say one way or the other.
10 I haven't reviewed that document in quite some time.

11 Q. What was the Manufacturing Chemists'
12 Association's document that Ashland provided to
13 customers, if requested, on the topic of benzene
14 before 1971?

15 A. I don't recall the title of it. I just
16 remember that there was a document, but the specifics
17 of it, without seeing it, I don't recall what that
18 was.

19 Q. Was the name of the Manufacturing Chemists'
20 Association's document Chemical Safety Data Sheet SD-2
21 for benzene?

22 A. I'm not sure what the title was. It sounds
23 plausible, but that's all I can say is that that title
24 is -- sounds like it could be it, but until I see it I
25 can't really say one way or the other.

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01 MR. DUPONT: To our video technician, could
02 you give me your e-mail address, please.

03 THE VIDEO TECHNICIAN: Sure. It's Benjamin,
04 the letter B, n-e-a-t-e, at Gmail.com.

05 MR. DUPONT: I'm sorry. Benjamin.

06 THE VIDEO TECHNICIAN: The letter B. And
07 then it's my last name, which is N-e-a-t-e, like
08 the word neat with a silent E at the end, at
09 Gmail.com.

10 BY MR. DUPONT:

11 Q. All right, Dr. Keenan, I'm going to see if I
12 can get these documents over to you.

13 A. Okay.

14 Q. So once Ashland put a label on the benzene
15 that it sold to customers in around 1971, what did
16 that label say?

17 A. I don't recall what it said. I would have to
18 see the label. And I don't believe they started --
19 I'm sorry. I don't believe they started dating the
20 labels until about 1974, so the only thing I recall is
21 that there was no date on those labels until '74.

22 Q. Does Ashland still have copies of the labels
23 it used on benzene when they started putting labels on
24 benzene in the 1970s?

25 A. I have seen them before. I cannot say one

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01 way or the other whether they're still there, but I
02 have seen them in depositions before.

03 Q. Did Ashland place a warning about -- strike
04 that.

05 Did Ashland place a warning about benzene
06 causing aplastic anemia on a label that it used to
07 sell benzene to customers on?

08 A. Once again, I don't recall exactly what was
09 provided on the labels at that time period. I do
10 recall that the MSDSs would have addressed aplastic
11 anemia during the '70s. I don't remember the exact
12 dates on that, but during the '70s they did have
13 aplastic anemia prior to '77.

14 Q. What was the first date that Ashland put a
15 aplastic anemia warning on a label -- strike that.

16 What was the date of the first MSDS
17 distributed by Ashland that contained an aplastic
18 anemia warning on it for benzene?

19 A. I don't recall the exact date. It was early
20 '70s.

21 Q. Did Ashland sell benzene to customers in the
22 1960s and 1970s which put the benzene into consumer
23 products?

24 MR. SAYRE: Objection. Calls for
25 speculation, lacks foundation.

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01 You can answer.

02 A. Yeah, I don't know the answer to that one way
03 or the other. And I don't believe we started
04 selling -- well, I don't know the answer. Just forget
05 that.

06 Q. Did Ashland have any type of policy in the
07 1960s and 1970s that it would not sell benzene for use
08 in consumer products?

09 A. I don't know the answer to that one way or
10 the other.

11 MR. DUPONT: All right. Our videographer,
12 did you receive the documents I sent to you?

13 THE VIDEO TECHNICIAN: I have been refreshing
14 my e-mail. I don't see it yet. Did you just
15 send it now?

16 MR. DUPONT: Yes.

17 THE VIDEO TECHNICIAN: I'm not seeing it in
18 my e-mail. Here we go.

19 MR. DUPONT: Let's begin with the document
20 that has PDF API Toxicological Review Benzene
21 1967. Would you be kind enough to show that to
22 the witness.

23 THE VIDEO TECHNICIAN: Sure. If you just
24 give me one second, I have to pull it into the
25 program. Sorry. Bear with me one minute.

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01 Which one did you want up first?
02 MR. DUPONT: API Toxicological Review Benzene
03 1960.
04 THE VIDEO TECHNICIAN: This one right?
05 MR. DUPONT: Yes.
06 THE VIDEO TECHNICIAN: Okay.
07 MR. DUPONT: Let's mark this as Exhibit 1 to
08 the deposition.
09 (Plaintiffs' Exhibit No. 1 was marked for
10 identification.)
11 BY MR. DUPONT:
12 Q. Dr. Keenan, I've marked as Exhibit 1 a
13 document with the title API Toxicological Review
14 Benzene, Second Edition, 1960. Can you see that?
15 A. No, not yet.
16 Q. Our technician has blown up the front page of
17 the API Toxicological Review Benzene, Second Edition,
18 1960. Can you see it now?
19 A. No, we're still not seeing it here.
20 MR. SAYRE: Technology promises so much.
21 THE WITNESS: Yes.
22 THE VIDEO TECHNICIAN: There's a way to make
23 it full screen. If you go to the share section
24 on there there should be four arrows to make the
25 document share full screen.

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01 MR. SAYRE: We don't see anything other than
02 the witness's face.

03 THE VIDEO TECHNICIAN: I'm not sure why
04 you're not. It should be up there.

05 MR. DUPONT: In the top right-hand corner are
06 there four arrows pointing in if you put the
07 mouse up there?

08 MR. SAYRE: Hey, gang, sorry to interrupt.
09 Let's go off the record so the reporter can help
10 without typing. Everyone agrees.

11 MR. DUPONT: Yes. Thank you.

12 THE VIDEOGRAPHER: We're going off the record
13 at 12:18.

14 (Discussion off the record.)

15 THE VIDEOGRAPHER: We're back on the record
16 at 12:18.

17 MR. SAYRE: And, Andrew, I would like you to
18 represent that this is a full and complete copy
19 of what this document purports to be as its
20 title.

21 MR. DUPONT: Let me ask the question first.

22 BY MR. DUPONT:

23 Q. Dr. Keenan, we have put on the screen on the
24 computer in front of you an image of the API
25 Toxicological Review Benzene, Second Edition, 1960,

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01 which is marked as Exhibit 1. Is this the API's
02 document from 1960 that you referred to as having been
03 prepared by Philip Drinker?

04 MR. SAYRE: And again, I'd asked can you
05 represent that this is a full and complete copy?

06 MR. DUPONT: Yes.

07 MR. SAYRE: Okay. Thank you. Go ahead.

08 A. Yes, it is.

09 BY MR. DUPONT:

10 Q. And it's your understanding that this
11 document was provided to customers of Ashland if
12 requested when they purchased benzene?

13 A. That's my understanding, yes.

14 Q. And this document was provided for the period
15 of time before 1971 when labels weren't on the benzene
16 that Ashland sold?

17 A. I don't know whether it stopped in 1971. I
18 don't know the end date when they stopped sending this
19 out up on request.

20 Q. Is your expectation that after 1971 if a
21 customer requested information on the health hazards
22 of benzene, that this API Toxicological Review Benzene
23 1960 would have been provided to them?

24 A. Well, I don't know when they would have
25 stopped sending this out. You got to understand that

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01 Ashland was still in the process of implementing a
02 system at that standpoint and whether there could have
03 been overlap they might have continued to send it out
04 and for the benzene that we manufactured a lot of the
05 customers probably already had this document in their
06 file because of just being members of the American
07 Petroleum Institute.

08 Q. Were some of Ashland's benzene customers not
09 members of the American Petroleum Institute?

10 MR. LO: Calls for speculation.

11 THE COURT REPORTER: Can you identify
12 yourself, please.

13 MR. LO: Sure. Philip Lo. Sorry.

14 A. I don't know the answer to that.

15 MR. SAYRE: Since one objection is good for
16 all, feel free to just put defense counsel.

17 THE COURT REPORTER: Thank you.

18 MR. DUPONT: For our videographer, can we go
19 to page 4 of the document. And could you blow up
20 the paragraph on the right-hand column. It's the
21 second full paragraph and it says "The bone
22 marrow" as the first words.

23 THE VIDEO TECHNICIAN: Where it says bone
24 marrow?

25 MR. DUPONT: That full paragraph, please.

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01 THE VIDEO TECHNICIAN: The last one?

02 MR. DUPONT: No, the second full paragraph on
03 the right-hand column that begins with "The bone
04 marrow."

05 MR. SAYRE: And while that's being done, I'm
06 going to object to the use of the document in
07 this fashion. The witness can't page through the
08 document to look at its entirety to refresh his
09 recollection. Also, the document appears to have
10 been altered with underlining and highlighting,
11 et cetera. So I object to the use of the
12 document for questioning.

13 Please go ahead.

14 BY MR. DUPONT:

15 Q. Dr. Keenan, we're looking at the API
16 toxicological review on benzene in 1960 and a
17 paragraph on the document that begins with the
18 sentence "The bone marrow may be hypoplastic, fairly
19 normal, or hyperplastic in appearance." Are you able
20 to see that?

21 A. Yes.

22 Q. The next sentence in the API 1960
23 Toxicological Review for benzene says "Abnormal forms
24 or young cells may abound and leukemia, as a result of
25 chronic benzene exposure, has been reported;" is that

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01 correct?

02 A. That's what the sentence says, yes.

03 Q. So did this API Toxicological Review on
04 benzene from 1960 provide the reader with information
05 about benzene causing leukemia?

06 DEFENSE COUNSEL: Objection. Calls for
07 speculation. Calls for an expert opinion.

08 MR. SAYRE: Join.

09 A. My understanding is that what they are
10 referring are case reports here and the case reports
11 are not really establishing causation, they're just
12 observations that have occurred.

13 MR. DUPONT: Objection. Move to strike as
14 nonresponsive.

15 BY MR. DUPONT:

16 Q. Does this API Toxicological Review for
17 benzene inform the reader that there have been reports
18 of leukemia as a result of chronic exposure to
19 benzene?

20 DEFENSE COUNSEL: Same objection.

21 MR. SAYRE: I'll object to the question in as
22 much as it calls for speculation as to what the
23 author intended. The document, of course, speaks
24 for itself. The witness is not an expert on the
25 document, is not being offered as to the

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01 knowledge of the author, and it says what it
02 says.

03 You can answer.

04 MR. DUPONT: Counsel, I think you can make an
05 objection to the form and then if I need further
06 clarification, as you said, I'll ask for it, but
07 providing additional information in your
08 objections is improper and should not be done.

09 MR. SAYRE: I think it was important for this
10 only because the court would need to know the
11 basis for the objection because this is kind of
12 important. So it's not my -- the witness is
13 fully capable -- he's got a Ph.D. in toxicology,
14 so he's fully capable of answering these
15 questions. I just want to make sure that the
16 court is aware, when it's reviewing the
17 transcript and if you were to highlight this
18 testimony as that which you want to read at
19 trial, that the court has the full information.

20 Not to mention I think you could -- you're a
21 very good lawyer. I'm sure you could rephrase
22 the question so that it's not objectionable.

23 A. I'm going to need you to repeat the question.

24 MR. SAYRE: We can have it reread.

25 THE WITNESS: Reread, either way.

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01 BY MR. DUPONT:

02 Q. Dr. Keenan, does the reader of this API
03 toxicological review for benzene in 1960 receive
04 information that there have been reports of leukemia
05 as a result of chronic benzene exposure?

06 MR. SAYRE: Same objections.

07 A. The document says what it says. It does say
08 that individuals have had a -- I'm trying to find it
09 again. Leukemia as a result of chronic benzene
10 exposure has been reported, and my understanding of
11 that is there were case reports of benzene exposure
12 being related to leukemia or associated with leukemia,
13 but those were case reports and observations, they're
14 not based upon an epidemiology study.

15 Q. Do you know how many reports and cases of
16 leukemia following exposure to benzene there were by
17 1970?

18 DEFENSE COUNSEL: Calls for speculation.

19 A. No.

20 MR. SAYRE: Go ahead.

21 A. I don't know the answer to that question as
22 what the specific number is, no.

23 Q. Was it your expectation that Ashland would
24 have been following the literature that was published
25 on the health hazards of benzene through the 1960s and

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01 1970s?

02 MR. SAYRE: Objection as to form,
03 specifically with the words "your expectation" as
04 vague and ambiguous.

05 You can answer.

06 Q. Let me back up. Did Ashland maintain abreast
07 of the literature on the health hazards of benzene
08 through the 1960s and 1970s?

09 A. That's my understanding, that they were
10 following the information on benzene during that time
11 period.

12 MR. DUPONT: If the technician would blow up
13 the paragraph above the one that we're looking at
14 right now that starts with "There is some."

15 THE VIDEO TECHNICIAN: I'm sorry. Is this
16 still page 4?

17 MR. DUPONT: Yes.

18 BY MR. DUPONT:

19 Q. Before we do that, let me ask you,
20 Dr. Keenan, did this API Toxicological Review on
21 benzene from 1960 provide the reader with information
22 about benzene causing aplastic anemia?

23 MR. SAYRE: Same objections as before. The
24 document speaks for itself.

25 You can answer. Calls for speculation.

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01 A. I'd have to see whether they actually called
02 out aplastic anemia. I don't see it, just scanning
03 the document in this paragraph. So I don't know the
04 answer to that. Specifically, my assumption is that
05 it did some place in the document say -- relate to
06 aplastic anemia.

07 MR. SAYRE: Move to strike the answer as an
08 assumption.

09 Q. Where the API Toxicological Review on benzene
10 from 1960 uses the term "chronic benzene poisoning" or
11 "benzene poisoning," what does that refer to?

12 MR. SAYRE: Same objections as before. Calls
13 for speculation, lacks foundation. Document
14 speaks for itself.

15 A. I don't see where that is in here in front of
16 me at this point. Oh, wait, I do see. Follow-up of
17 chronic benzene poisoning.

18 During early years -- my understanding is
19 during the early years of benzene exposure that a lot
20 of -- very extremely high exposures to benzene could
21 occur and those exposures cause CNS depression and
22 things like that, and that would be my thoughts on
23 what they were talking about people who were exposed
24 to large enough to cause acute symptoms of benzene
25 effects.

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01 Q. Was benzene poisoning a term used to describe
02 aplastic anemia?

03 MR. SAYRE: Same objections. Calls for
04 speculation. Document speaks for itself.

05 A. That's not my understanding.

06 MR. DUPONT: To our videographer, can you
07 pull up the PDF of the document that says 1960
08 MCA Chemical Safety Data Sheet SD-2 Benzene. And
09 can you blow up that section with the title of
10 the document.

11 MR. SAYRE: And while we're doing that
12 technically, I will object to the use of this
13 document on the same basis that I objected to the
14 use of the last document, specifically that the
15 document is not before the witness, it's only
16 there virtually and it's -- we have no means of
17 looking at the document in total except what is
18 being shown.

19 BY MR. DUPONT:

20 Q. Dr. Keenan, for any of these documents, the
21 videographer is capable of showing any portion of the
22 document that you want to see. So if I ask you a
23 question and you feel the need to look at another
24 portion of the document, you're free to do so. Okay?

25 A. Okay.

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01 (Plaintiffs' Exhibit No. 2 was marked for
02 identification.)

03 Q. So, Dr. Keenan, we're looking at the document
04 which we'll mark as Exhibit 2 with the title Chemical
05 Safety Data Sheet SD-2, Properties and Essential
06 Information For Safe Handling and Use of Benzene, 1960
07 Third Edition. Third Revision, excuse me. Do you see
08 that?

09 A. Yes, I do.

10 Q. Is this the Manufacturing Chemists'
11 Association document from 1960 that you referred to as
12 a document that Ashland would have provided upon
13 request to a customer buying benzene from Ashland in
14 the 1970s?

15 MR. SAYRE: I apologize. I thought you were
16 done.

17 Same objections as before. You're showing a
18 title page and you're showing a blowup the of the
19 title page. Once again, the witness has already
20 testified he hasn't seen this document for a long
21 time, he wouldn't know where to look otherwise to
22 authenticate it. So, again, we object to the use
23 of the document in this fashion.

24 You can answer.

25 A. I was going to ask if you could back off of

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01 the blowup so I could see the whole title page first
02 and just -- yes, this is the document. Because down
03 at the bottom it says Manufacturing Chemists'
04 Associated, Incorporated. It was the one I was --

05 Q. All right. And was this document sent to
06 Ashland's customers who purchased benzene when they
07 requested it in both the 1960s and 1970s?

08 MR. SAYRE: Same objections.

09 A. It would have -- that's my understanding, but
10 probably not until the late '60s when Ashland became a
11 member of the Manufacturing Chemists' Association.

12 Q. When did Ashland become a member of the
13 American Petroleum Institute?

14 A. Oh, gosh. I think it was 1940s. I want to
15 say '48, but I'm not exactly sure why that date is
16 hanging in my mind. It's some time in that time
17 frame.

18 Q. Did Ashland receive the 1948 version of the
19 API toxicological review for benzene?

20 A. It is my understanding that they didn't
21 initially because they weren't manufacturing benzene
22 at that time period.

23 Q. What is your understanding of when Ashland
24 first received the API toxicological review for
25 benzene dated 1948?

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01 A. It would have been in the late '50s when
02 Ashland started to produce benzene.

03 Q. Did Ashland, at some point, have a library or
04 collection of documents related to the health hazards
05 of benzene?

06 A. Yes, there was information maintained on
07 hazards of benzene, either through textbooks or some
08 documents from trade associations.

09 Q. How would you refer to that collection of
10 information on the health hazards of benzene?

11 A. It was benzene, a file containing benzene
12 information. During that time period that would
13 have -- it would have just been a hard copy file.

14 Q. Where did Ashland keep its hard copy file of
15 benzene health hazard information?

16 A. When I first started there was a file room
17 that we kept information on all the products that we
18 sold and that's where it was maintained. A lot of
19 it's been -- I don't know what's happened to some of
20 it now.

21 Q. Where did Ashland --

22 (Telephone interruption.)

23 MR. SAYRE: I apologize, Counsel, we just
24 got --

25 THE WITNESS: This is all right. It's spam.

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01 MR. SAYRE: It's spam. Go ahead.

02 BY MR. DUPONT:

03 Q. In the 1960s and 1970s, where did Ashland
04 keep its file of benzene health hazard information?

05 A. I don't know the answer to that question. I
06 wasn't around at that time period at Ashland. I
07 didn't pursue where they were maintained, that
08 information.

09 Q. What textbooks did Ashland have in its
10 collection of benzene health hazard information in the
11 1960s and 1970s?

12 A. Once again, I won't be able to answer that
13 question either because I only was familiar with the
14 documents -- with the textbooks that were present when
15 I started.

16 Q. When you started with Ashland in 1989, which
17 textbooks were in Ashland's collection of information
18 on the health hazards of benzene?

19 A. The one I can remember most vividly, because
20 we had the whole collection, was the IARC monographs
21 on benzene, I mean on carcinogens, and there was a
22 volume, maybe more than one volume on benzene. Other
23 than that -- it's been too long. I don't remember
24 what else was there.

25 I know IARC was there. We had some other

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01 toxicology textbooks, Casarett & Doull, which would
02 have been there, which would have covered benzene to
03 some degree, but there were other textbooks there.
04 I'm just not recalling what they were.

05 Q. Are you familiar with the Irving Sax's
06 textbook entitled Dangerous Properties of Industrial
07 Materials?

08 A. I am.

09 Q. Was that a textbook Ashland had in its files
10 of the health hazards of benzene when you began in
11 1989?

12 A. They had the textbook. It would not be in
13 the files, no. Textbooks would not be in files. They
14 were in the library.

15 Q. Which editions of the Sax Dangerous
16 Properties of Industrial Materials did Ashland have in
17 the library when you began in 1989?

18 A. I don't recall the dates.

19 Q. Did Ashland have the third edition from 1968
20 of the Sax Dangerous Properties of Industrial
21 Materials textbook?

22 A. Once again, I don't know one way or the other
23 what the date was on that textbook.

24 Q. When you interviewed the individuals who were
25 employed by Ashland in the 1960s and 1970s in order to

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01 learn about Ashland's historic activities and
02 knowledge related to benzene, did they tell you what
03 their sources of knowledge were about the health
04 hazards of benzene?

05 A. Well, yes, from some degree they did. I
06 mean, these documents that we're talking about
07 participation in the trade associations they did, but
08 specifically as to which texts they relied upon, there
09 is also NIOSH criteria documents that were available
10 in the '70s. So there was a lot of information that
11 came out in the '70s on benzene.

12 Q. Did any of the individuals that you
13 interviewed tell you what textbooks Ashland had in its
14 possession in the 1960s?

15 A. No. We did not ask -- I did not ask that
16 question and no one provided that information to me.

17 Q. Did any of the individuals that you
18 interviewed tell you which textbooks Ashland had in
19 the 1970s?

20 A. No, they did not. That was another question
21 I did not ask that question.

22 Q. Did Ashland have the 1974 IARC monograph
23 which addressed benzene?

24 A. I'd have to see the document. We had the
25 IARC monographs, but I don't recall the dates of the

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01 IARC monographs on benzene so I can't confirm one way
02 or the other whether it was 1974 or not.

03 Q. What was Ashland's procedure in the 1970s for
04 obtaining copies of the IARC monographs?

05 A. They purchased them from IARC.

06 Q. Did Ashland purchase the IARC monographs in
07 the 1970s at or about the time they were published?

08 A. I don't know the answer to that question.

09 MR. SAYRE: Calls for speculation, last
10 question.

11 MR. DUPONT: For the video technician,
12 there's a PDF that you should have that is IARC
13 1974. Would you display that to the witness,
14 please.

15 THE VIDEO TECHNICIAN: You said IRC 1974?

16 MR. DUPONT: IARC 1974.

17 MR. SAYRE: And, Andrew, may I have a
18 continuing objection so I don't have to keep
19 saying the same thing, that presenting documents
20 to the witness in this fashion does not allow him
21 to peruse the document both before and after
22 what's been being shown to him and, of course,
23 your comments in response.

24 MR. DUPONT: Yes, you can.

25 MR. SAYRE: Thank you. Thank you, Counsel.

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01 (Plaintiffs' Exhibit No. 3 was marked for
02 identification.)

03 BY MR. DUPONT:

04 Q. Dr. Keenan, our videographer, or video
05 technician is displaying to you a document that I'm
06 going to mark as Exhibit 3 to your deposition with the
07 title that begins IARC Monographs On The Evaluation Of
08 The Carcinogenic Risk Of Chemicals To Man, Some
09 anti-thyroid and related substances, nitrofurans and
10 industrial chemicals Volume 7. Do you see that?

11 A. Yes, I do.

12 Q. And at the bottom of the document there are
13 dates, 4 to 11 February 1974 and 18 to 24 June 1974.
14 Do you see that?

15 A. I do.

16 Q. Is this a IARC monograph that was in
17 Ashland's records when you began with the company in
18 1989?

19 A. Yes, we had Volume 7.

20 Q. And is this type of document that Ashland
'21 would have read in order to follow what was being
22 published on the health hazards of benzene?

23 A. We would have used -- relied on this document
24 as well as other pieces of information, yes.

25 Q. Did Ashland ever pass on the IARC monograph

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01 from 1974 to customers that bought benzene from it?

02 A. You mean provide them with this textbook?

03 Q. Yes, or information from it.

04 A. I know -- I would assume that we did not
05 provide them with a textbook since I believe they're
06 copyrighted, but I'm not a hundred percent sure about
07 that because I can't see the full document, but the
08 hazard communication that would have been provided in
09 our MSDSs and labels during this time period, if the
10 people doing the evaluation felt it was relevant they
11 would have passed information on from that, but I
12 would have no way of knowing whether they provided
13 excerpts out of this document to our customers upon
14 request.

15 MR. DUPONT: To our video technician, can we
16 turn to page 15 of the document, please. And
17 could you blow up that portion of it. There you
18 go.

19 Q. Doctor, if -- strike that.

20 Dr. Keenan, we've now blown up the language
21 on page 216 of the IARC monograph relating to benzene
22 in 1974 and there's sections that discuss comments on
23 data reported and evaluation. Do you see that?

24 A. Yes.

25 Q. And section 4.2 contains information on human

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01 data. Do you see that?

02 A. I do.

03 Q. And in this section the IARC states, "It is
04 established that exposure to commercial benzene or
05 benzene-containing mixtures may result in damage to
06 the hematopoietic system." Do you see that?

07 A. I do.

08 Q. And is it your understanding that the
09 hematopoietic system is the blood-forming system?

10 A. That's correct.

11 Q. And that consists primarily of the bone
12 marrow?

13 A. Yes.

14 Q. The section on human data in the IARC's
15 conclusions in 1974 continues to read, "A relationship
16 between such exposure and the development of leukemia
17 is suggested by many case reports and this suggestion
18 is strengthened by a case-control study from Japan."
19 Do you see that?

20 A. I do.

21 Q. In 1974, did Ashland's benzene MSDS and
22 labels provide information about benzene and leukemia?

23 A. Before I answer that question, there should
24 have been also in this document, someplace maybe in
25 the next page, where they come -- IARC comes to some

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01 type of final conclusion about the weight of evidence
02 of this data. So I'd like to see that. But my --

03 MR. SAYRE: May we see that before he answers
04 your question?

05 Q. Actually, the next page, page 217, begins the
06 list of references. So page 216 that I've shown you
07 is the --

08 A. Maybe it's a prior page then.

09 MR. SAYRE: Perhaps it's a prior page.

10 Q. Page 215, if you would like to see that,
11 contains information on epidemiological studies. Is
12 that what you're referring to?

13 A. No. And maybe it was later documents they
14 started to do an overall weight of evidence.

15 MR. SAYRE: Here's the problem, Counsel,
16 because we can't look through the document, we
17 can't find what the witness recalls. So the
18 questioning, for the purposes of moving to
19 exclude this testimony at the time of trial, I'm
20 speaking now to the court, this is patently
21 unfair to the witness because he can't look
22 through the document and peruse it. So we're
23 trying to find what he needs and we can't do it
24 through this system.

25 You may continue your deposition.

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01 DEFENSE COUNSEL: Objection as to this line
02 of questioning. Calls for an expert opinion.

03 THE VIDEO TECHNICIAN: Excuse me, Counsel.
04 Which page would you like me to be on right now?

05 MR. SAYRE: That's the videographer; right?
06 Are you asking us here in the deposition room or
07 are you asking plaintiffs' counsel?

08 MR. DUPONT: Go back to PDF page 15, please.
09 That's PDF page 14.

10 THE VIDEO TECHNICIAN: I thought you said
11 215. I'm sorry.

12 BY MR. DUPONT:

13 Q. All right, Dr. Keenan. We're looking at the
14 section of the 1974 API -- strike that.

15 Dr. Keenan, we're looking at the IARC's 1974
16 monograph for benzene and section 4 that says Comments
17 on Data Reported and Evaluation. Do you see that?

18 A. Yes.

19 Q. And under the section on Human Data there's a
20 sentence that reads, "A relationship between such
21 exposure and the development of leukemia is suggested
22 by many case reports, and this suggestion is
23 strengthened by a case-control study from Japan." Did
24 I read that correctly?

25 A. You did.

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01 DEFENSE COUNSEL: The document speaks for
02 itself.

03 Q. So we're clear, when it says "A relationship
04 between such exposure and the development of
05 leukemia," what they're referring to is exposure to
06 benzene and the development of leukemia; correct?

07 DEFENSE COUNSEL: Calls for speculation.

08 MR. SAYRE: Lacks foundation.

09 A. What it's talking about is, once again,
10 referring to case reports and it's suggested, they're
11 saying there's some reports that are out there that
12 are suggesting it. Another document that was
13 available at this time period from NIOSH also referred
14 to the case reports, but felt like there wasn't
15 sufficient evidence to develop or establish a
16 relationship between benzene exposure and leukemia and
17 suggested that further epidemiology studies be
18 conducted, which were started in the '70s and started
19 to really come about in the later '70s.

20 So, during this time period this, to me, it
21 says there's information out there that's suggestive,
22 but it's not conclusive and doesn't really tell you
23 that there is a relationship. And NIOSH was also
24 agreeing with that type of opinion, that the data were
25 not strong enough to make a conclusion that that is --

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01 there was a relationship here in 1974.

02 MR. DUPONT: Objection. Move to strike.

03 Nonresponsive.

04 Q. Dr. Keenan, my question is when the document
05 states "A relationship between such exposure and the
06 development of leukemia is suggested by many case
07 reports and the suggestion is strengthened by a
08 case-control study from Japan," the exposure they're
09 referring to is exposure to benzene or
10 benzene-containing mixtures; correct?

11 MR. SAYRE: Same objection. Asked and
12 answered.

13 A. The prior sentence does refer to benzene and
14 benzene-containing mixtures. So that statement was,
15 in my interpretation, is referring to benzene and
16 benzene-containing chemicals. But, once again, this
17 says suggested. It's not saying there's an
18 established relationship between exposure to benzene
19 and the development of leukemia.

20 MR. DUPONT: I'll move to strike everything
21 beyond the word "chemicals."

22 THE WITNESS: Can we take a break soon? We
23 can finish this line of questioning.

24 MR. SAYRE: By the way, Counsel, I'm sorry,
25 the witness had asked, turned to me and asked if

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01 we could take a break soon, but then he realized
02 that you had further questions about this
03 document. So when you get to a natural breaking
04 point, let's take a quick break.

05 BY MR. DUPONT:

06 Q. Did Ashland's MSDS for benzene that was used
07 in 1974 reference leukemia?

08 A. Without having the document in front of me, I
09 can't answer that question. I don't know one way or
10 the other.

11 Q. When is your understanding of when the date
12 the word "leukemia" first appeared on an MSDS for
13 benzene that was used by Ashland?

14 A. I'm fairly certain that it was 1977 without
15 looking at the documents, but I can't -- I think it
16 was 1977, but that's my assumption. Sometime in that
17 time period.

18 Q. When did the word "leukemia" first appear on
19 a label that was used by Ashland for benzene?

20 MR. SAYRE: Objection to form. You can
21 answer.

22 A. I can't answer that question one way or the
23 other. I don't know without seeing the document.

24 MR. DUPONT: The witness has requested a
25 break, so we'll take a break.

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01 THE VIDEOGRAPHER: We are going off the
02 record. The time is 12:57 p.m.

03 (Recess from 12:57 p.m. to 1:05 p.m.)

04 THE VIDEOGRAPHER: We're back on the record.
05 The time is 1:05 p.m. This begins media unit
06 number two.

07 BY MR. DUPONT:

08 Q. Dr. Keenan, we have on the screen for you the
09 complete page of a document that has at the top
10 Ashland Oil, Inc., Interim Material Safety Data Sheet
11 for benzene, and at the bottom has a date, December 2,
12 1971. Have you seen this document before?

13 A. Yes, I have.

14 Q. And you're familiar with it?

15 A. I am somewhat. I mean, I don't have it
16 committed to memory but I know what the document is.

17 Q. What is your understanding of what the
18 document is?

19 A. This was the -- well, as it says on the
20 document, it was an interim safety data sheet while
21 they were still preparing the material safety data
22 sheet systems to provide hazard communication
23 information in the early '70s.

24 Q. How was this interim material safety data
25 sheet for benzene dated December 2, 1971 used?

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01 A. This would have been provided to customers if
02 they requested it.

03 Q. So the procedure, at least in 1971, was that
04 Ashland provided the interim material safety data
05 sheet for benzene to a customer only if a customer
06 requested it?

07 A. That's my understanding.

08 MR. DUPONT: We'll go ahead and mark this as
09 the next exhibit number. I think that's 4.

10 (Plaintiffs' Exhibit No. 4 was marked for
11 identification.)

12 Q. Did the December 2, 1971, Interim Material
13 Safety Data Sheet For Benzene provide a warning about
14 benzene causing aplastic anemia?

15 A. I can't read it very well. Can it be
16 enlarged?

17 Q. We can enlarge any section of the document
18 that you want to see.

19 A. Okay.

20 THE VIDEO TECHNICIAN: Is there a particular
21 spot that you want enlarged?

22 THE WITNESS: I don't remember the document
23 well enough to tell you.

24 MR. SAYRE: Doctor, is this the same copy?

25 THE WITNESS: Yes.

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01 MR. SAYRE: I have a paper copy I'm showing
02 him right now.

03 MR. DUPONT: Great.

04 BY MR. DUPONT:

05 Q. Dr. Keenan, do you have what we've marked as
06 Exhibit 4 before you, the Ashland Oil, Inc., Interim
07 Material Safety Data Sheet For Benzene dated December
08 2, 1971?

09 A. I do. Yes.

10 Q. Does the 1971 version of Ashland's material
11 safety data sheet for benzene provide the reader with
12 any warning or information about benzene causing
13 aplastic anemia?

14 MR. SAYRE: He's reading the document.

15 A. No, it does not appear to have that
16 information on here.

17 Q. Does 1971 Ashland MSDS for benzene provide
18 the information with any information and benzene
19 causing damage to the blood-forming system?

20 A. No, it does not have that warning on this
21 document.

22 Q. Does the 1971 Ashland MSDS for benzene
23 provide the reader with any information about benzene
24 causing anemia?

25 A. No, that information is not here.

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01 Q. Did the 1971 Ashland MSDS for benzene provide
02 the reader with any information about the need to wear
03 a respirator to prevent exposure to benzene?

04 A. It suggests having special ventilation, but
05 do not see anything for respirator.

06 Q. What is your understanding of what is meant
07 by special ventilation?

08 A. It could be lots of different things. It
09 would depend upon the operation that the material was
10 being used in, so this was information to a customer
11 if they were using this product that they should
12 consider ventilation in the area it's using it.

13 Q. Does this 1971 benzene MSDS tell the reader
14 that benzene is absorbed through human skin?

15 MR. SAYRE: The document speaks for itself.
16 You can answer.

17 A. No, it does not address skin absorption.

18 Q. Do you know what information was reviewed by
19 individuals at Ashland when they prepared this
20 material safety data sheet?

21 A. This is an interim material safety data
22 sheet. I don't know exactly what they reviewed, but
23 they would have had the documents, some of the
24 documents we discussed prior to this on the -- from
25 the Manufacturing Chemists' Association and API.

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01 Q. You're saying they would have had the API
02 toxicological review on benzene from 1960 and 1948 as
03 well as the Manufacturing Chemists' Associations SD-2
04 sheet?

05 A. That would be my understanding, yes.

06 THE COURT REPORTER: I need to turn up the
07 volume. Hold on one second. Okay.

08 MR. SAYRE: Good to go.

09 BY MR. DUPONT:

10 Q. What was the next date of material safety
11 data sheet that was prepared by Ashland for benzene?

12 A. I don't know off the top of my head. I would
13 have to see the document.

14 MR. DUPONT: And to our video technician, can
15 we display PDF 1976.11.11 Ashland MSDS.

16 Q. Dr. Keenan, are you able to see the November
17 11, 1976 Ashland benzene MSDS that's on the screen?

18 MR. SAYRE: Andrew, may I ask, does the copy
19 that you have have an ASHCOLE 00912?

20 MR. DUPONT: It does.

21 MR. SAYRE: Okay. I have it here for him. I
22 will show it to him now.

23 A. It's difficult to read on the screen. It's
24 difficult to read on paper too.

25 Yes, I do see this document.

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01 (Plaintiffs' Exhibit No. 5 was marked for
02 identification.)

03 Q. All right. So we'll mark as Exhibit 5 to
04 your deposition, the Ashland Material Safety Data
05 Sheet for benzene that's dated November 11, 1976.

06 A. Yes.

07 Q. By this time, November 11, 1976, was benzene
08 accepted to be a cause of aplastic anemia?

09 MR. SAYRE: Objection. Vague and ambiguous
10 by what you mean accepted.

11 You can answer.

12 DEFENSE COUNSEL: Calls for an expert
13 opinion. Calls for speculation.

14 A. It's my understanding that benzene had been
15 associated with aplastic anemia in 1976.

16 BY MR. DUPONT:

17 Q. And would you say that benzene was a known
18 cause of aplastic anemia by 1976?

19 A. Yes, I would say that. Yes.

20 DEFENSE COUNSEL: Sorry. Same objections.

21 Q. So we have context, what is aplastic anemia?

22 A. Well, aplastic anemia is -- well, it's
23 anemia.

24 MR. SAYRE: Calls for an expert opinion. The
25 witness can answer based on his understanding.

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01 Go ahead.

02 A. My understanding is more vague than it used
03 to be since I've been retired for a few years, but
04 it's -- I think all the blood-forming cells are in
05 deficit in aplastic anemia.

06 Q. Are you aware that aplastic anemia can be a
07 fatal condition?

08 MR. SAYRE: Objection. Calls for an expert
09 opinion. Calls for a medical opinion.

10 A. Yeah, I'm not a physician so I'm not going
11 to -- I don't have an answer for that one way or the
12 other.

13 Q. Does this November 11, 1976, MSDS for benzene
14 that was prepared by Ashland make reference to
15 leukemia or cancer?

16 A. Well, there's more pages than this, so I
17 would have to -- I've got more pages in front of me.

18 Actually, on section 9 of this MSDS it does.
19 "Overexposure to this material has been found to cause
20 aplastic anemia and liver, kidney, system and bone
21 marrow damage and also endocrine gland changes in
22 laboratory animals. Overexposure to this material has
23 been suggested to cause a -- cause of anemia and liver
24 and lung damage in humans."

25 Q. Yeah. So take a look through the entire

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01 document and tell me, does it make reference to
02 leukemia or cancer?

03 A. I just -- it does not refer to leukemia or a
04 cancer. It does refer to aplastic anemia and anemia
05 and other effects, bone marrow damage. But in '76
06 there was still -- it was '77 before the Pliofilm and
07 the association came out.

08 MR. DUPONT: Objection. Move to strike the
09 nonresponsive portion.

10 Q. When you began with Ashland in 1989, did the
11 company have a copy of Hamilton and Hardy's textbook?

12 A. I believe they did.

13 Q. And is that a textbook that you are familiar
14 with?

15 A. I've seen it before, yes. I wouldn't say I'm
16 familiar with it.

17 Q. Which versions of Hamilton and Hardy's
18 textbook did Ashland have when you began with the
19 company in 1974?

20 A. I don't recall which versions. And, I'm
21 sorry, could you repeat -- when did he say?

22 MR. SAYRE: Did he say '74 or '84?

23 A. It was '89. Should have been '89.

24 Q. Okay. I apologize.

25 A. I am old, but I'm not that old yet.

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01 Q. Which version of the Hamilton and Hardy
02 textbook did Ashland have in 1989 when you began with
03 the company?

04 A. And, once again, I don't know which version
05 it was.

06 Q. The Hamilton and Hardy textbook that you're
07 familiar with, was that called Industrial Toxicology?

08 A. I don't remember the title. I remember it by
09 Hamilton and Hardy. It could be Industrial
10 Toxicology. I don't know.

11 Q. And that name Hamilton, does that refer to
12 Alice Hamilton?

13 A. That's my understanding, yes.

14 Q. And she was a professor of industrial
15 medicine at the Harvard School of Public Health?

16 A. I don't recall where she was an instructor
17 at.

18 Q. Do you agree that she was somebody who
19 published quite a few articles and texts on benzene
20 and its health hazards?

21 DEFENSE COUNSEL: Calls for speculation.

22 MR. SAYRE: Lacks foundation.

23 A. I don't know the answer to that one way or
24 the other.

25 BY MR. DUPONT:

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01 Q. How did Ashland use the Hamilton and Hardy
02 textbook?

03 A. Well, it would be like other textbooks, they
04 would have looked at the information in there and done
05 an evaluation of the information versus other
06 information that was also available at that time.

07 Q. So the Hamilton and Hardy textbook was one of
08 the sources of information that Ashland had when it
09 considered the health hazards of benzene?

10 MR. SAYRE: Objection to form.

11 A. I can't state a hundred percent that they
12 used that document, that book at that time period, but
13 it should have -- it was available when I started.
14 But whether it was available to them in the '70s, I
15 don't know.

16 Q. Is it the type of document or publication
17 that Ashland would read in order to maintain abreast
18 of what was being published on the health hazards of
19 benzene?

20 A. It would have been a document that they would
21 have looked at if they had it in their possession at
22 the time periods that you're referring to, yes. And
23 I'm not sure what time periods you're talking about
24 and which publication we're talking about and what the
25 dates of this are.

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01 Q. In the 1960s and 1970s when Ashland was
02 reviewing information in order to be educated about
03 the health hazards of benzene, was Hamilton and
04 Hardy's textbook one of the sources of information
05 that it would have reviewed?

06 MR. SAYRE: Objection to form.

07 A. I can't answer that question because I don't
08 know which version of that textbook was in place and
09 whether they had it during that time period or whether
10 they had a more recent version of the textbook when I
11 got there.

12 MR. DUPONT: To our video technician, could
13 we pull up the PDF 1974 Hamilton, A, mark it as
14 Exhibit 6, please.

15 THE VIDEO TECHNICIAN: Sure. Give me one
16 second to pull that item to the program. Okay.

17 (Plaintiffs' Exhibit No. 6 was marked for
18 identification.)

19 MR. SAYRE: And, for the record, same
20 objections. I believe I have a continuing
21 objection to the documents being shown on the
22 computer in this fashion.

23 MR. DUPONT: To our technician, could you
24 expand upon the section of the document that
25 includes the title Industrial Toxicology and goes

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01 through the bottom Publishing Sciences Group,
02 Inc.

03 BY MR. DUPONT:

04 Q. Dr. Keenan, can you see what we've blown up
05 as the first -- the cover of Exhibit 6 titled
06 Industrial Toxicology, Third Edition, by Alice
07 Hamilton and Harriet Hardy?

08 A. Yes, I see it.

09 Q. Is that the Hamilton and Hardy textbook that
10 you saw in Ashland's records, the library, in 1989?

11 A. I don't know whether it was the third edition
12 I saw.

13 Q. Okay. Understanding you're uncertain as to
14 which edition it was, was industrial toxicology by
15 Hamilton and Hardy the textbook that you saw in
16 Ashland's records when you began in 1989?

17 A. Yes. They had a textbook named Industrial
18 Toxicology by Hamilton and Hardy, but the edition I'm
19 not certain.

20 Q. Did Ashland have multiple editions of
21 Industrial Toxicology by Hamilton and Hardy when you
22 began with the company in 1989?

23 A. I don't recall one way or the other.

24 Q. When Ashland sold benzene to customers in the
25 1960s and 1970s, did it tell them that they should or

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01 should not use benzene in consumer products?

02 MR. SAYRE: Objection. Asked and answered.

03 A. I don't know the answer to that question one
04 way or the other.

05 MR. DUPONT: To our videographer, can we go
06 to the PDF page number 4 to the exhibit.

07 THE VIDEO TECHNICIAN: I'm sorry. I couldn't
08 hear because there a noise that just happened
09 here. What did you say?

10 MR. DUPONT: Go to PDF page 4 to the exhibit,
11 please.

12 THE VIDEO TECHNICIAN: Page 4 of this
13 exhibit?

14 MR. DUPONT: Yes.

15 BY MR. DUPONT:

16 Q. Dr. Keenan, we're displaying for you a page
17 from Hamilton and Hardy's 1974 Industrial Toxicology
18 textbook which contains part of the section on toxic
19 effects. Do you see that?

20 A. Yes.

21 Q. And what I'd like to do is blow up so that
22 you can read it, the first two sentences of the second
23 paragraph under Toxic Effects.

24 MR. DUPONT: The second paragraph, please.

25 THE VIDEO TECHNICIAN: You said second

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01 paragraph down here?

02 MR. DUPONT: Second paragraph under Toxic
03 Effects, yes.

04 VIDEO TECHNICIAN: Sorry. Give me one
05 second. I don't know why it's doing this.

06 DEFENSE COUNSEL: Can we get people to mute
07 their phone.

08 BY MR. DUPONT:

09 Q. Dr. Keenan, while we're trying to work
10 through these technical difficulties here, can you
11 read the text that's on the page now?

12 A. No.

13 MR. SAYRE: It's very small.

14 THE WITNESS: Now we got it blown up.

15 MR. SAYRE: Again, same objections as to the
16 document being unavailable to peruse. It's
17 unfair to the witness.

18 DEFENSE COUNSEL: I also want to state an
19 objection that the witness is not sure that this
20 is the edition that they had.

21 BY MR. DUPONT:

22 Q. Dr. Keenan, in this section from Hamilton and
23 Hardy's 1974 textbook Industrial Toxicology, on the
24 toxic effects of benzene there's a paragraph that
25 begins with the sentence "Chronic benzene poisoning is

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01 of far greater toxicological significance." And the
02 next sentence reads, "Its incidents has been gradually
03 decreasing over recent years with the improvement of
04 industrial hygiene measures and a thoughtful and
05 effective search for technically satisfactory and less
06 toxic benzene substitute." Do you see that?

07 A. Yes. That's what those two sentences say.

08 Q. Was Ashland aware, by 1974, that there was
09 already, for a period of time before 1974, a movement
10 to substitute benzene for less toxic solvents?

11 MR. SAYRE: Objection to form.

12 DEFENSE COUNSEL: Calls for speculation and
13 expert opinion.

14 A. I can't say one way or the other as to
15 whether that's the situation. I know that early in
16 the 20th Century the benzene toxicity from a poisoning
17 standpoint was of concern and it was used less until,
18 I think, World War II, and then the use of it started
19 to increase again because of its usefulness.

20 BY MR. DUPONT:

21 Q. Was the increase of benzene use in World War
22 II in order to make explosives for the war?

23 A. I have no idea why it was used. I just
24 remember reading that from some time period ago that
25 that was the situation, that benzene use was

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01 diminishing and then the war efforts because, I think,
02 of the lack of -- or availability of other solvents
03 caused it to increase again.

04 Q. Can you turn to the next page of the
05 document, PDF page 5. And if you would turn to the
06 paragraph that begins with the words "While there has
07 been no doubt."

08 Dr. Keenan, the first sentence in this
09 paragraph says, "While there has been no doubt for
10 many years that benzene can produce fatal aplastic
11 anemia, the association between benzene exposure and
12 leukemia has been a matter of more recent
13 controversy." Do you see that?

14 A. I do.

15 Q. Do you agree that as of 1974 there was no
16 doubt for many years that benzene produced fatal
17 aplastic anemia?

18 MR. SAYRE: Objection. Calls for an expert
19 opinion, lack of foundation, calls for
20 speculation.

21 You can answer.

22 A. I agree that benzene exposure and aplastic
23 anemia were associated prior to 1974. I don't know
24 about the fatal part.

25 Q. Do you agree that there was no doubt in the

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01 medical community by 1974 and years before 1974 that
02 benzene produced aplastic anemia?

03 MR. SAYRE: Same objections. The witness has
04 not been offered as an expert witness. It calls
05 for an opinion and has nothing to do with
06 Ashland. You're asking for his opinion.

07 You can answer.

08 A. It's my understanding, as I said before, that
09 benzene exposure was associated with aplastic anemia
10 prior to 1980 -- 1974.

11 DEFENSE COUNSEL: I also want to make a
12 belated objection this textbook is not a medical
13 textbook.

14 Q. Dr. Keenan, the next sentence in this
15 textbook by the medical doctor, Alice Hamilton, reads
16 "It is now --" well, let me withdraw that.

17 The next sentence in this paragraph from
18 Hamilton and Hardy's 1974 Industrial Toxicology
19 textbook reads, "It is now generally accepted that
20 benzene can produce leukemia of varying forms and that
21 such leukemia can appear with or without an antecedent
22 history of aplastic anemia." And they cite to an
23 article by Vigliani and Saita, 1964. Do you see that?

24 A. I see that.

25 Q. And it continues to read that "The conversion

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01 of aplastic anemia to leukemia is not uncommon in
02 cases in which the cause of anemia is unknown." Do
03 you see that?

04 A. I see that.

05 Q. And it continues to have a discussion of the
06 types of leukemia that were observed and reported
07 after exposure to benzene?

08 MR. SAYRE: What's the question?

09 Q. Is it correct that this paragraph follows
10 with information on types of leukemia that were
11 reported after exposure to benzene?

12 MR. SAYRE: The document -- lack of
13 foundation, calls for speculation. The document
14 speaks for itself.

15 DEFENSE COUNSEL: Calls for an expert
16 opinion. Calls for a medical opinion.

17 A. I'm not sure if I've been asked a question.

18 MR. SAYRE: Please rephrase your question.

19 BY MR. DUPONT:

20 Q. When the authors state in this document
21 "Chronic myelogenous leukemia appears to be the most
22 common type associated with benzene exposure, but
23 acute myelogenous and acute and chronic lymphocytic
24 varieties has been reported as well, are they
25 providing the reader with information about the types

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01 of leukemia that has been reported following exposure
02 to benzene?

03 MR. SAYRE: Okay. Calls for speculation as
04 to the mind of another and the intent of the
05 author. The document speaks for itself. The
06 witness has not authenticated the document as one
07 in the possession of Ashland.

08 Appears you're asking for an opinion of an
09 expert. He's not been designated as such. And
10 all the other objections we've made to these
11 documents.

12 You can answer.

13 A. That's what the document says. I have no
14 other additional comments on this other than that this
15 is the opinion of the authors that they've published
16 here.

17 Q. Where the document states "It is now
18 generally accepted that benzene can produce leukemia
19 of varying forms and that such leukemia can appear
20 with or without an antecedent history of aplastic
21 anemia," is that information that was available to
22 Ashland as of 1974?

23 MR. SAYRE: All the same objections.

24 A. And, once again, I cannot state that they had
25 this document prior to 1974. Or prior to 1989. I

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01 don't know which version we had when I got there and I
02 don't know when they purchased it.

03 Q. Do you agree this textbook was something
04 publicly available to Ashland and that the information
05 that it states that it is now generally accepted that
06 benzene can produce leukemia of varying forms and that
07 such leukemia can appear with or without an antecedent
08 history of aplastic anemia was available to Ashland by
09 1974 through a search of the public literature?

10 MR. SAYRE: So I will object to the question
11 on several grounds. One is that it calls for the
12 witness to speculate. The witness has not
13 authenticated the document, has no personal
14 knowledge of the document you've shown him and as
15 not identified it as one that Ashland necessarily
16 had. It presumes facts not in evidence and the
17 document itself has not been authenticated, calls
18 for speculation, lacks foundation.

19 You can answer.

20 THE WITNESS: Could you reread the question.

21 (The question was read by the reporter.)

22 MR. SAYRE: Also it's compound and seeks an
23 opinion from an expert and he's not been offered
24 as an expert.

25 A. I don't know the exact publication date of

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01 this book, but after it was published it would have
02 been publicly available to anybody who decided to
03 purchase it. Now, whether Ashland purchased it or had
04 it in their possession at that time period, I don't
05 know the answer to that.

06 DEFENSE COUNSEL: Counsel, can I have a
07 clarification. Is Exhibit 6 the entire textbook?

08 MR. DUPONT: It is not the entire textbook.

09 DEFENSE COUNSEL: Thank you.

10 BY MR. DUPONT:

11 Q. If Ashland obtained Hamilton and Hardy's 1974
12 textbook in 1974 and read the statement that it was
13 now general accepted that benzene can produce leukemia
14 of varying forms and that such leukemia can appear
15 with or without an antecedent history of aplastic
16 anemia, would it have -- would Ashland have provided
17 that information to customers on a material safety
18 data sheet?

19 MR. SAYRE: So object to the question on the
20 basis that it's incomplete hypothetical. The
21 witness has been designated as a corporate
22 representative to the categories mentioned and in
23 none of the categories does it suggest that a
24 hypothetical question will be asked. He's here
25 to provide information as to what he knows

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01 actually happened, not what would have or should
02 have or could have happened, and as a result it
03 calls for speculation and lacks foundation. May
04 also call for an expert opinion.

05 You can answer.

06 A. I really don't know one way or the other.
07 There was a lot of information that was available that
08 they would have considered at that time period and
09 this is one author's opinion of what the data
10 suggested.

11 As I said before, the NIOSH document
12 disagrees with this statement in 1974 and so, once
13 again, you're getting into controversy about whether
14 this is happening or not in this time period. And so
15 whether that information how Ashland would have viewed
16 that information at that time period, I cannot make
17 that leap of faith to make that statement to know how
18 they did that.

19 Q. Was Ashland aware of the publication by
20 Vigliani and Saita during the 1960s and 1970s on their
21 investigation of benzene-exposed workers?

22 MR. SAYRE: Same objections as before.

23 A. I don't know one way or the other whether
24 they had that document or not. That publication.

25 Q. Let's go back to the 1976 Ashland benzene

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01 MSDS.

02 THE VIDEO TECHNICIAN: You said 1976 Ashland?

03 MR. DUPONT: Benzene MSDS.

04 MR. SAYRE: Andrew, he has it in front of
05 him.

06 MR. DUPONT: Yes. We don't need to put it up
07 on the screen right now because he has a hard
08 copy.

09 THE VIDEO TECHNICIAN: Okay. I'll take it
10 down.

11 BY MR. DUPONT:

12 Q. Did Ashland have a material safety data sheet
13 for benzene that was dated between the 1971 Interim
14 Benzene MSDS and the 1976 benzene MSDS?

15 A. I believe so.

16 Q. What date or dates did Ashland prepare
17 material safety data sheets between 1971 and 1976?

18 A. Without seeing the documents, I don't know
19 the exact dates. Vaguely something's sticking in my
20 mind that's '72. Might have been the first document
21 that was based on the OSHA form, form 20.

22 Q. When did Ashland first warn about aplastic
23 anemia on a benzene MSDS?

24 MR. SAYRE: Objection. Asked and answered.

25 A. Without seeing the documents, I can't state.

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01 I don't know the answer to that question. We know
02 they state it in the '76 one, but I don't know whether
03 anything prior to that.

04 Q. Do you have any copies of Ashland material
05 safety data sheets with you other than the 1971 and
06 1976 version that we've marked as an exhibit?

07 A. I personally didn't bring any documents to
08 this deposition.

09 Q. Does your counsel have any copies of a
10 Ashland material safety data sheet other than the 1971
11 and 1976 version that we've marked as exhibits?

12 MR. SAYRE: I don't believe I'm being
13 deposed.

14 A. I don't know the answer to that, I will
15 answer that question. They did not show me documents
16 yesterday.

17 Q. Does Ashland still have material safety data
18 sheets for benzene that it used in the 1970s?

19 A. I don't know the answer to that question
20 because those businesses have been sold. Petroleum
21 business, I think, left -- well, they joint ventured
22 in 2004, 2005, and then Marathon purchased the whole
23 thing and a few years later, I think, 2008, '9,
24 something like that, and then the distribution company
25 which would have been responsible for the drums of

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01 benzene in the early '70s would have been sold in
02 2011.

03 MR. SAYRE: And I will belatedly object on
04 the basis that he's not being offered as the
05 custodian of records. Calls for speculation,
06 lacks foundation.

07 Q. Has any search been conducted by Ashland
08 related to its sales of benzene to a company called
09 The Savogran Company?

10 MR. SAYRE: Same objections. He's not being
11 offered -- it's not in the categories that I
12 mentioned that he's being offered for. He would
13 have no way of knowing.

14 But you can answer the question.

15 Q. You can answer the question.

16 A. I don't know one way or the other.

17 Q. Has Ashland ever -- strike that.

18 Has Ashland conducted any search for its
19 sales of benzene to Berryman Products, Inc.?

20 MR. SAYRE: Same objection.

21 A. I do not know one way or the other.

22 Q. Are you aware that The Savogran Company has
23 produced records of their purchase of benzene for a
24 blend of 90 percent benzene and 10 percent acetone?

25 MR. SAYRE: Beyond the scope of the

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01 deposition notice and the categories. Appears
02 you're asking him a question about the status of
03 the litigation and what's happened in the
04 litigation. Calls for speculation, lacks
05 foundation.

06 You can answer.

07 THE WITNESS: Could you reread the question.
08 (The question was read by the reporter.)

09 A. I'm not aware that records of purchase were
10 produced.

11 BY MR. DUPONT:

12 Q. When Ashland sold benzene or a blend of
13 chemicals that contain benzene as an ingredient to a
14 customer in, say, 1970 through 1974, did it make any
15 effort to determine how the customer was going to use
16 that blend of benzene?

17 A. I don't know the answer to that question.

18 Q. Did Ashland make any recommendations against
19 using benzene as an ingredient in consumer products in
20 1970 and 1974?

21 MR. SAYRE: I believe that was asked and
22 answered. You can answer. Same objections as
23 before as to that question.

24 A. I don't know the answer to that question.

25 Q. Before selling a customer benzene in the

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01 1970s, did Ashland make any effort to determine what
02 its customer knew about the health hazards of benzene?

03 A. I don't know the answer to that question.

04 Q. Would it have been a good industrial hygiene
05 practice by Ashland in the 1970s to determine what its
06 customer's knowledge of the health hazards of benzene
07 were before selling it benzene?

08 MR. SAYRE: So let me make the objection as
09 to reptile questioning complete and then I'll
10 just reference this back every time.

11 Reptile questioning is based on a book that
12 was published by certain authors designed to call
13 for jury nullification. It's a series of
14 questions that, in its basic form, seeks
15 hypothetical questions of witnesses in order to
16 elicit responses that would then trigger, in the
17 jury's mind, a concern for their own health and
18 safety.

19 It's improper in several respects but, most
20 importantly, it does not seek any facts that the
21 witness is here to be produced for. It's beyond
22 the scope of the notice and it also is
23 fundamentally unfair of the witness because it's
24 would this, would that.

25 And so the hypothetical lacks foundation

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01 calls for speculation. So from now on I will

02 just call that my reptile objection.

03 You can answer.

04 THE WITNESS: Could you repeat the question.

05 (The question was read by the reporter.)

06 MR. SAYRE: Also, the time period is not

07 noted. It appears you're asking him that as of

08 now. And it also seeks an opinion from an expert

09 witness and he's not an expert.

10 You can answer.

11 A. I'm not certain what good industrial hygiene

12 practice would have been considered in the 1970s.

13 BY MR. DUPONT:

14 Q. Did Ashland have any policy in the 1970s to

15 determine whether its customers had knowledge of the

16 health hazards of benzene before selling them benzene?

17 A. I do not know one way or the other whether

18 there was policies in place.

19 Q. Did Ashland have any policy of determining

20 whether its customers appreciated the health hazards

21 of benzene before making blends of chemicals

22 containing benzene for them in the 1970s?

23 A. It would be the same response I gave before.

24 I don't know one way or the other.

25 Q. Did Ashland have a policy in the 1970s of

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01 providing its customers with all of the information
02 Ashland had about the health hazards of benzene when
03 it sold them either benzene or a blend containing
04 benzene?

05 A. The only thing I'm familiar with is Ashland
06 would provide some of those documents we've previously
07 discussed upon request.

08 Q. Do you have any knowledge that Ashland
09 provided its customers with all of the information it
10 had on the health hazards of benzene at or before the
11 time it sold them benzene or blends of benzene in the
12 1970s?

13 A. I do not know one way or the other.

14 MR. SAYRE: Could I have the question reread.
15 (The question was read by the reporter.)

16 MR. SAYRE: Go ahead. Is now a good breaking
17 point? We went another hour or so.

18 MR. DUPONT: Sure.

19 DEFENSE COUNSEL: How much longer do you
20 have, if I may ask?

21 MR. DUPONT: I don't know the answer to that
22 question.

23 THE VIDEOGRAPHER: We're going off the record
24 at 1:53 p.m.

25 (Recess from 1:53 p.m. to 2:03 p.m.)

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01 THE VIDEOGRAPHER: We're back on the record

02 at 2:03 p.m.

03 (Plaintiffs' Exhibit No. 7 was marked for
04 identification.)

05 BY MR. DUPONT:

06 Q. Dr. Keenan, I would like to ask you about a
07 document we'll mark as the next exhibit, I think
08 Exhibit 7, and it is a memorandum dated September 21,
09 1976, between a J.H. Sweet and a D.L., I'm assuming
10 it's pronounced Coticchia, C-o-t-i-c-c-h-i-a, subject
11 benzene. Are you able to see that?

12 A. Yes.

13 Q. Is this a document that you've seen before?

14 A. No.

15 MR. SAYRE: Could you scroll down to the
16 bottom. Does it have a Bates stamp?

17 MR. DUPONT: Yes. It's ASHCOLE 2246 through
18 2247.

19 MR. SAYRE: Thank you.

20 MR. DUPONT: Do you have a hard copy of that
21 with you, Counsel?

22 MR. SAYRE: I do not.

23 BY MR. DUPONT:

24 Q. Earlier we discussed an individual named, I
25 think it was Jack Sweet, who was somebody you spoke to

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01 in order to learn about Ashland's operations and
02 knowledge in the 1960s and 1970s?

03 A. That's correct.

04 Q. Is J.H. Sweet on this memorandum the Jack
05 Sweet you're referring to?

06 A. It is.

07 MR. SAYRE: Objection. Calls for
08 speculation, lack of foundation. The witness has
09 not seen the document.

10 THE WITNESS: That would be my assumption,
11 that it is the same person.

12 MR. SAYRE: Move to strike as an assumption.

13 BY MR. DUPONT:

14 Q. Were the initials J.H. and the last name of
15 Sweet used at Ashland to refer to Jack Sweet?

16 MR. SAYRE: Same objections. You can answer.

17 A. Well, Sweet obviously was his last name and
18 J. is the first initial for Jack. I don't know his
19 middle initial.

20 Q. Are you familiar with the last name Coticchia
21 as it relates to a individual who was employed by
22 Ashland?

23 A. I've heard the name before. I can't remember
24 the role that the person had.

25 Q. You've heard that there was an employee with

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01 the last name Coticchia who worked at Ashland?

02 A. I've heard the name before, yes, in context
03 that Ashland employed, but I don't remember the time
04 period.

05 Q. This memo contains the sentence, "The
06 attached summarizes data relative to which IC&S
07 Districts currently handle benzene." Do you see that?

08 A. I do.

09 Q. Do you know what IC&S Districts refers to?

10 A. Yes.

11 Q. What?

12 A. That was the name of the distribution
13 business. It was Industrial Chemicals & Solvents.
14 And districts, they had the different distribution
15 sites divided into different districts.

16 Q. So IC&S refers to Ashland's Industrial,
17 Chemicals & Solvents distribution business?

18 A. That's correct.

19 Q. And the word "districts" refers to the
20 facilities within the Ashland chemical distribution
21 business?

22 MR. SAYRE: I'm going to object to the
23 questioning with regard to this document as a
24 whole. Belated objection. It calls for
25 speculation, lacks foundation. The witness has

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01 said he's not seen this document before.

02 You can answer.

03 A. IC&S was the term that was used for that
04 business within Ashland and their business, their
05 distribution facilities, were divided into districts.

06 Q. Let's turn to the second page of the
07 document, please. And at the top of the page it says
08 "Handles Benzene," and then there's various columns.
09 Do you see that?

10 A. I do.

11 Q. And the column on the left-hand side refers
12 to various districts?

13 A. It mentions different cities, yes.

14 Q. And are the cities listed on the column
15 district on the -- I'm sorry.

16 MR. SAYRE: Go ahead and finish your
17 question.

18 A. Finish.

19 Q. What's your understanding of the significance
20 of this column for district under Handles Benzene?

21 MR. SAYRE: Object to the question. It calls
22 for speculation, lack of foundation. The witness
23 has said he has not seen the document.

24 You can answer.

25 A. My understanding of district was different

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01 than this. These are individual sites and that some
02 of the sites would have been lumped into districts.
03 So this document does not reflect my -- what my memory
04 of how those terms were used at Ashland.

05 Q. All right. So, as you read this document,
06 the locations under "District" are individual towns or
07 cities?

08 MR. SAYRE: Same objection.

09 A. They would be locations where a distribution
10 facility would be. Some of those I recognize and some
11 of them I don't.

12 Q. All right. Which Ashland distribution
13 facilities do you recognize that are listed under
14 "District" in this exhibit?

15 A. I recognize Akron and Chicago. Columbus,
16 Ohio. Roanoke and Sante Fe Springs are all ones that
17 I recognize and know that were distribution sites when
18 I was employed.

19 Q. The next column of information says "In
20 Bulk," do you see that?

21 A. I do.

22 Q. And what is meant here by in bulk?

23 MR. SAYRE: Same objection. Calls for
24 speculation, lacks foundation, and the document
25 has been not authenticated by the witness.

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01 You can answer.

02 A. Once again, I would have to assume what it
03 means, but to me it means that they are handling it in
04 bulk quantities, not drum quantities.

05 MR. SAYRE: Move to strike as speculative.

06 Q. And what were the methods used by Ashland to
07 distribute chemicals from a distribution facility in
08 bulk?

09 A. Many methods that they could. They could
10 have -- sometimes they don't even handle the --
11 sometimes they directly ship from the supplier to the
12 customer, so that could be a bulk shipment that way.
13 It could be a bulk shipment by partial tank truck.
14 And later, I don't think during the early '70s, but I
15 don't know this for a fact, there were things such as
16 totes, larger quantity containers than drums.

17 Q. So let's take the period of 1970 to 1974.
18 Did Ashland distribution facilities have tanks where
19 they stored chemicals including benzene?

20 A. Ashland distribution facilities would have
21 had storage tanks, yes.

22 Q. And did Ashland distribution facilities, in
23 that period from 1970 to 1974 use tanker trucks to
24 transport chemicals including benzene from its
25 distribution facilities to customers?

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01 A. I don't know that for a fact during that time
02 period. I don't know the answer one way or the other.

03 Q. When you began with Ashland in 1989, was it
04 using tanker trucks to distribute chemicals from its
05 distribution facilities?

06 A. For certain customers for certain types of
07 products, yes, that was the situation.

08 Q. What types of customers and what types of
09 products?

10 A. Well, the customers I can't -- it's
11 speculation because I don't have any specific
12 examples, but I know we did sell tanker trucks of
13 material to customers. But it would be a customer
14 that had a need for large quantities of these
15 materials and, as I said, a lot of the times we didn't
16 handle it at all, it would come directly from the
17 supplier and go straight to the customer.

18 Q. Was it the case, in 1970 and 1974, that
19 Ashland would -- strike that.

20 Well, when chemicals went straight from a
21 supplier to a customer, how did that, logistically,
22 work?

23 A. Well, the sale would have been handled by
24 Ashland and so Ashland would have arranged for the
25 product to be delivered from the supplier. Often

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01 times some of the suppliers didn't want to sell to
02 smaller customers and that's the reason why it would
03 go through a distributor.

04 Q. So when you referred to suppliers, are you
05 referring to an oil or chemical company that was
06 actually manufacturing the chemical?

07 A. In that type of situation, yes, that would be
08 the most likely situation.

09 Q. So sometimes Ashland would distribute a
10 chemical by picking it up directly from a supplier's
11 refinery or chemical plant and taking it to a
12 customer's facility?

13 MR. SAYRE: I'm going to object to the
14 question as vague and ambiguous, what you mean by
15 picking up and taking.

16 A. Could you repeat the question.

17 Q. When Ashland --

18 A. That's fine. Go ahead.

19 Q. So in those instances when there was a sale
20 of products from a supplier's facility to a customer,
21 did Ashland physically pick the product up from the
22 supplier and take it to the customer?

23 A. I'm not certain. I don't believe they did
24 that. I think that we arranged a shipment through,
25 but I don't know whether we sent our own trucks to

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01 pick it up and deliver it or whether it was a
02 third-party shipment.

03 Q. Do you know whether Ashland sold chemicals in
04 that form from suppliers to customers that appeared in
05 1970 and 1974?

06 A. I don't know the answer to that question one
07 way or the other.

08 Q. Now, in this exhibit where it discusses
09 locations that handle benzene, there's a column that
10 says "Makes Blends." Can you pull that back up?

11 A. Yes.

12 Q. Do you know what that column means?

13 MR. SAYRE: Same objections. Calls for
14 speculation, lacks foundation, the witness has
15 not authenticated the document.

16 You can answer.

17 A. Okay. Once again, it would be an assumption,
18 but I would -- my assumption would be that it means
19 that they're making blends with benzene.

20 MR. SAYRE: Move to strike on the basis that
21 it's an assumption.

22 Q. Having seen this document, do you have any
23 reason to believe that it was not a document created
24 by Ashland?

25 MR. SAYRE: Object to the question on the

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01 basis that it's argumentative and doesn't support
02 an authentication.

03 You can answer. Do you know one way or the
04 other?

05 A. Can we go back to the first page so I can see
06 it again.

07 No. Other than me recognizing some names on
08 here, I can't authenticate it one way or the other.

09 Q. Were you involved in a case that was filed
10 against Ashland with an individual last name Cole,
11 C-o-l-e?

12 A. Possibly. I don't know.

13 Q. Which Ashland distribution district did
14 Massachusetts fall within?

15 A. I don't remember the district names anymore.
16 Tewksbury, during my time period, I think that's how
17 it was pronounced, is the name of the site in
18 Massachusetts. Tewksbury.

19 Q. Was benzene stored and distributed from the
20 Tewksbury facility when you worked there in 1989?

21 A. No, it would not have been.

22 Q. Why is it that you say that?

23 A. Because we stopped manufacturing before I got
24 there, the benzene, and we stopped selling benzene in
25 drums in 1977. So I would have no -- it would

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01 surprise me greatly if they had benzene at that site.

02 Q. And remind me, when did Ashland stop selling
03 benzene in bulk, meaning in containers larger than
04 drums?

05 A. Well, the Catlettsburg refinery would have
06 been the last place that was manufacturing benzene and
07 that was to -- still was to corporate accounts so it
08 would not go through any distribution facility, that
09 would have been direct from the refinery to the
10 customer.

11 Q. When did Ashland last sell benzene through
12 its distribution business in bulk?

13 A. I'm not sure they ever sold benzene in bulk
14 through the distribution business. I am aware, from
15 some of the interviews, that they drummed benzene, but
16 no one ever mentioned to me that there was bulk sales.

17 Q. Did you ever ask anybody whether there was
18 bulk sales through the distribution business?

19 A. Not that I recall.

20 Q. Did you ever meet or hear of an individual
21 named John Gale who worked for Ashland?

22 A. No, the name doesn't seem familiar.

23 Q. Are you familiar with The Savogran Company?

24 A. No, I'm not.

25 Q. Was there a manager of the Tewksbury,

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01 Massachusetts district when you began with Ashland?

02 A. I'm sure there was. I don't know who it was.

03 MR. SAYRE: By the way, Andrew, we have lunch
04 here. I don't know what your plans are in this
05 regard. I think we could eat within five or ten
06 minutes. I'm just concerned about the witness
07 because he's got a condition that requires him to
08 eat.

09 MR. DUPONT: Okay. If there's a medical or
10 other need to take a lunch break, I'm perfectly
11 happy to do so. I don't know that I have that
12 much more questions.

13 MR. SAYRE: What would you like to do, Tom?
14 He doesn't have very many more. Might as well
15 power through and have lunch after he's done.

16 THE WITNESS: Yeah, we can do that.

17 MR. SAYRE: Okay. Andrew, go ahead. Sorry
18 for the interruption.

19 MR. DUPONT: Let's go back to --

20 THE WITNESS: Could you repeat that.

21 MR. SAYRE: There we go.

22 THE VIDEO TECHNICIAN: Did you say to go back
23 to another document?

24 MR. DUPONT: Why don't we do this. Let's go
25 off the record, we can take a quick -- how much

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01 time do you think you need for lunch?

02 MR. SAYRE: Oh, probably no more than five or
03 ten minutes. Ten minutes.

04 MR. DUPONT: Let's take ten minutes for
05 lunch.

06 THE VIDEOGRAPHER: We're going off the record
07 at 2:23 p.m.

08 (Recess from 2:23 p.m. to 2:39 p.m.)

09 THE VIDEOGRAPHER: We're back on the record
10 at 2:39 p.m.

11 BY MR. DUPONT:

12 Q. Dr. Keenan, would you grab the exhibit that
13 we marked as the 1971 Ashland MSDS for benzene.

14 A. The interim data sheet?

15 Q. Yes.

16 A. Yes, I've got it.

17 Q. Where Ashland recommends the use of special
18 ventilation under the category of special protective
19 equipment for benzene, what is special ventilation?

20 A. I think we've already talked about this.
21 Special ventilation, in my interpretation of this, it
22 depends upon the use that the customer is using the
23 product. So if he was drumming the material you would
24 be using a different type of special ventilation
25 versus if we was pouring the material into a vat to

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01 make a reaction. So it would depend upon the
02 situation.

03 Q. Does special ventilation refer to local
04 exhaust ventilation?

05 A. That is a type of ventilation, yes.

06 THE COURT REPORTER: Mr. DuPont, can you get
07 closer to the phone, or the mic. Thank you.

08 MR. DUPONT: Yes.

09 BY MR. DUPONT:

10 Q. Was local exhaust ventilation the proper form
11 of ventilation to use when applying a
12 benzene-containing mixture indoors?

13 MR. SAYRE: Objection to the form of the
14 question. It seems that you're asking an expert
15 opinion instead of factually what was done and
16 why.

17 You can answer.

18 A. Well, I don't know enough information to know
19 what would be appropriate or not. I need more
20 information about the situation.

21 Q. You worked for the American Petroleum
22 Institute for a period of time; is that correct?

23 A. That's correct.

24 Q. And after joining Ashland as an employee in
25 1989, were there periods of time where you had

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01 interaction with the American Petroleum Institute?

02 A. Yes.

03 Q. And what was your role at Ashland with
04 respect to the American Petroleum Institute?

05 A. During that time period was primarily on a
06 task force dealing with commercial hexane and testing
07 of commercial hexane.

08 Q. Until what year did you continue to interact
09 with the American Petroleum Institute?

10 A. It was early '90s. The testing was completed
11 early to mid '90s. I don't recall the exact date.

12 Q. Did you have involvement with the American
13 Petroleum Institute after the year 2000?

14 A. I don't recall. I was getting information
15 from them on a additives testing that was going on for
16 motor oils, but I wasn't having any direct
17 interactions with them after 2000 that I recall.

18 Q. In the early 1990s when you were interacting
19 with the American Petroleum Institute on behalf of
20 Ashland, were you involved or did you receive
21 information about the American Petroleum Institute's
22 work on benzene?

23 A. No, not during that time period, I didn't
24 receive information on benzene.

25 Q. Until what year was Ashland a member of the

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01 American Petroleum Institute?

02 A. It would have -- I don't know the exact date.
03 When we joint ventured the petroleum company with
04 Marathon was around 2004. I believe we still maintain
05 membership because of our ownership of Valvoline and
06 this oil additive program that was going on in
07 American Petroleum Institute, and I don't -- after
08 that that testing was over, I think we did drop
09 membership, but I'm not a hundred percent sure of that
10 because at that point we were essentially just a
11 chemical company, we were not a petroleum company.

12 Q. Did Ashland learn about the American
13 Petroleum Institute's Shanghai Health Study?

14 A. Not that I'm aware of. There was no
15 information that was directly received by Ashland on
16 that.

17 Q. Did Ashland provide support to the American
18 Petroleum Institute or the benzene -- strike that.

19 Did Ashland provide support to the Benzene
20 Health Research Consortium related to the Shanghai
21 Health Studies?

22 A. Not that I'm aware of.

23 MR. DUPONT: To our video technician, can you
24 pull up the document that says "Review of
25 ChemRisk Draft Entitled Benzene-Induced

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01 Leukemia."

02 MR. SAYRE: I'm going to reassert my
03 objections as to showing the witness documents
04 that he's unable to peruse. Sections of these
05 documents are being shown to him without giving
06 the witness the opportunity to find context for
07 them. As a result, it's patently unfair of the
08 witness to do this this way.

09 (Plaintiffs' Exhibit No. 8 was marked for
10 identification.)

11 BY MR. DUPONT:

12 Q. Dr. Keenan, we're showing you what we'll mark
13 as the next exhibit in order, and it's a letter dated
14 November 15, 1990, from Sally Cowles, M.D., to Paul
15 Price of the American Petroleum Institute. Are you
16 able to see that?

17 A. Yes.

18 Q. Have you seen this letter before?

19 A. I don't recall it.

20 Q. Are you familiar with the American Petroleum
21 Institute interacting with the organization ChemRisk
22 with respect to drafting an article entitled
23 Benzene-Induced Leukemia, An Examination of Disease
24 Endpoints?

25 A. No, I'm not familiar with this.

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01 MR. SAYRE: I will add to my objection to
02 these documents, this one in particular, I can't
03 see it so I've been effectively eliminated from
04 the process in order to object to these
05 documents.

06 Q. Dr. Keenan, did you know Sally Cowles?

07 A. No, I did not.

08 Q. Did you know Paul Price?

09 A. Yes, I did know Paul.

10 Q. And how did you know Paul Price?

11 A. I think Paul actually worked for ChemRisk at
12 one point. And then -- I think I knew him from that
13 time period. I didn't realize he worked for the
14 American Petroleum Institute.

15 Q. The first paragraph of the document, let's go
16 step by step with this. In the first sentence here
17 Dr. Cowles writes to Paul Price that Ralph Gingell
18 provided me a copy of the ChemRisk draft, referring to
19 the draft of Benzene-Induced Leukemia, An Examination
20 of Disease Endpoints, and asked that I submit comments
21 directly to you. Do you see that?

22 A. Yes.

23 Q. And then Dr. Cowles writes, "I have read the
24 above referenced draft and have the following general
25 comments." Do you see that?

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01 A. I do.

02 Q. And in the first paragraph Dr. Cowles writes,
03 "It is not clear to me just what is hoped to be gained
04 from emphasizing the potential role of MDS as a
05 leukemia precursor and a chemically-induced
06 condition." Do you see that?

07 A. I do.

08 Q. And then she continues to write, "I don't
09 have any great disagreement with the discussion, but
10 think that the endpoint --" excuse me "-- but think
11 that the point can be made that there are differences
12 between the different leukemias without admitting that
13 benzene may cause MDS as well." Do you see that?

14 A. I do.

15 Q. In your time at Ashland and otherwise, did
16 you review a document that was -- strike that. Have
17 you seen -- strike that.

18 Are you aware of ChemRisk or anybody else
19 ever publishing the article Benzene-Induced Leukemia,
20 An Examination of Disease Endpoints?

21 MR. SAYRE: I'm going to object to the line
22 of questioning with regard to this document on
23 the same basis I've said before, but also on the
24 basis that the document has not been
25 authenticated. You're assuming that the document

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01 is authentic and then asking questions concerning
02 the substance of it to the witness, which is
03 patently unfair to the witness because he has not
04 acknowledged he's ever seen the document. So he
05 would be speculating as to --

06 MR. DUPONT: Counsel, I'm sure, as in every
07 jurisdiction, there are rules that you can make a
08 succinct objection to the form or foundation of a
09 question. I think many times during this
10 deposition you've gone beyond what's permissible
11 and I'd ask you to please stop and follow the
12 rules and simply make a succinct objection.

13 MR. SAYRE: So let me respond for the
14 purposes of meet and conferring.

15 I've been very lenient on the use of these
16 documents in this manner because it's my desire
17 to get the deposition done with, but I will tell
18 you, Mr. DuPont, that what you're doing is
19 patently improper and unfair to the witness and
20 there is a basis for me to instruct him not to
21 answer questions this way. We were not given
22 these documents in hard copy and what you're
23 doing is patently wrong and inconsistent with
24 California Rules of Court and California Civil
25 Procedure.

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01 And I understand that you would prefer to be
02 in your office doing this, but that doesn't
03 create an obligation for the witness to try to
04 answer questions in this fashion. I'm relying on
05 my objections as a choice instead of instructing
06 and then getting into law and motion on it. I
07 believe the court will sustain these objections,
08 but the court needs to know why I'm objecting
09 because, unless I do that, you will make the
10 argument that I've waived those objections.

11 So I'm not trying to coach or instruct. What
12 I'm trying to do is make a record because I fully
13 intend to exclude all of this questioning with
14 regard to each one of the documents that have
15 been shown to him via this system you've set up.
16 It serves your purpose, but not the witness's.

17 MR. DUPONT: Can I get the last question read
18 back, please.

19 (The question was read by the reporter.)

20 A. I'm not aware one way or the other whether
21 this was published or not.

22 BY MR. DUPONT:

23 Q. Do you know why members of the American
24 Petroleum Institute in 1990 would have had a concern
25 with admitting that benzene may cause MDS?

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01 MR. SAYRE: Calls for speculation, lacks
02 foundation, beyond the scope of the deposition
03 notice.

04 A. I don't have an opinion on that. I have no
05 idea as to why -- as to how to answer that question.

06 Q. In this paragraph Dr. Cowles continues to
07 write, "There would appear to be ample other arguments
08 for different etiologies of the lymphocytic leukemias
09 and CML than the argument presented that since MDS
10 cases often showed similar chromosomal changes to AML
11 cases and a certain percentage go on to become AML,
12 that therefore MDS is the just another entity in the
13 benzene-induced disease continuum." Do you see that?

14 A. I do.

15 Q. Was there a awareness at Ashland, in the late
16 1980s, early 1990s, that there were cases of
17 benzene-caused leukemias where the individual was
18 first diagnosed with MDS?

19 MR. SAYRE: Objection to the extent that
20 you're using this document as a basis for your
21 question is improper. The document is not
22 authenticated, he's not the author of the
23 document, he's not a recipient of the document
24 and neither is Ashland.

25 You can answer.

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01 A. I don't know one way or the other whether
02 Ashland had any awareness of this in the '80s.

03 Q. When did Ashland first become aware of
04 benzene causing MDS?

05 A. I'm not sure Ashland became aware of it.
06 They stopped manufacturing it in 1989.

07 Q. Dr. Cowles continues to write that, "This
08 only effects a trade in diseases. We won't consider
09 ALL, CLL, or CML to be benzene-induced, but we will
10 accept all MDS. I am skeptical that anything is
11 gained from such position and suspect that a net loss
12 would result." Do you see that?

13 A. I do.

14 Q. Do you know what the net loss to the members
15 of the American Petroleum Institute would be for
16 recognizing that benzene causes all MDS?

17 MR. SAYRE: So I'm going to object on the
18 basis it calls for speculation, lacks foundation,
19 on the basis that the witness is not a recipient
20 of this document, not the author, it's not
21 authenticated, he's not said that he's ever seen
22 it, and it's not part of Ashland's records.

23 You're clearly asking him to speculate and
24 you're getting into the realm, right now, of
25 harassing him. So I advise you, Counsel, to be

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01 very careful here because I think the record is
02 very clear now that you're ignoring my requests
03 to not do this. It's not fair to the witness.
04 He keeps telling you he doesn't know. He's never
05 seen this before.

06 I will not instruct now, he will tell you
07 again that he doesn't know, but any more
08 questions we're going to take a break and maybe
09 we can get the court on the line. This is really
10 unfair and wasting time.

11 Go ahead, sir.

12 THE WITNESS: Would you repeat the -- reread
13 the question.

14 (The question was read by the reporter.)

15 A. I have no idea one way or the other what
16 Dr. Cowles was trying to refer to in this letter. I
17 just don't know.

18 BY MR. DUPONT:

19 Q. Was there discussion at the American
20 Petroleum Institute about benzene causing MDS in the
21 early 1990s?

22 A. I did not participate in the API on these
23 topics in the early 1990s, so I have no way of
24 knowing.

25 Q. Were there others from Ashland who

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01 participated at the American Petroleum Institute on
02 benzene-related issues in 1990s?

03 A. Not that I'm aware of.

04 Q. Was Ashland receiving information from the
05 American Petroleum Institute on the health hazards of
06 chemicals in the early 1990s?

07 A. As I stated before, we were specifically --
08 in the chemical business we were specifically working
09 on the commercial hexane testing and we also, after
10 the 2000 time period were receiving information on the
11 additives for motor oils. But, beyond that, I am not
12 aware of any other information. We were no longer
13 manufacturing benzene at that point, so we would not
14 have been participating on these councils.

15 Q. Was Ashland receiving information from the
16 American Petroleum Institute in the early 1990s about
17 the health hazards of chemicals?

18 A. As I stated before that, yes, we were
19 receiving information on the commercial hexane because
20 we were active participants and also on the additives
21 for the motor oils. Other than that, I'm not aware of
22 any other thing we would have received.

23 Q. Can you turn to the second page of the
24 document, please. The last paragraph of Dr. Cowles
25 letter says, in the first sentence, "In summary, my

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01 impression is that this draft needs considerable work
02 and perhaps a thorough discussion and identification
03 of just what its purpose is before a rewrite." Do you
04 see that?

05 A. I do.

06 Q. And Dr. Cowles continues to write, "As it
07 stands, it would appear to accept MDS as a
08 benzene-related disease and the potential for many
09 other solvents in addition to benzene to cause
10 leukemia. This would not seem to further the API
11 cause particularly." Do you see that?

12 A. I do.

13 Q. Do you know what the API cause is that
14 Dr. Cowles is referring to here?

15 MR. SAYRE: Same objections.

16 A. I have no idea what she's referring to. This
17 is her letter. You should ask her.

18 Q. Was part of the API's purpose to advocate on
19 behalf of members of the American Petroleum Institute?

20 MR. SAYRE: Calls for speculation, lacks
21 foundation.

22 By the way, this is not in your notice.

23 Counsel, could you direct me where in this notice
24 that that's a category, what you just asked?

25 Q. Sir, you worked at the American Petroleum

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01 Institute; correct?

02 A. I did, yes.

03 Q. And through your employment working at the
04 American Petroleum Institute, did you come to learn
05 that part of the purpose of the American Petroleum
06 Institute was to be an organization that advocated on
07 behalf of its members?

08 MR. SAYRE: So let me interrupt this
09 questioning. This is the deposition of Ashland,
10 not of that organization. This is not in your
11 notice. This is really outrageous.

12 What you're trying to do is question him
13 regarding his relationships as a person outside
14 of Ashland. It's not proper. It's patently
15 improper, actually.

16 Please direct me where in your notice that
17 you've identified this line of questioning. And
18 how does it relate to Ashland.

19 Q. Can you answer the question, please?

20 MR. SAYRE: No, he's not until you answer
21 mine. Counsel, you can't just do whatever you
22 want. It's not proper.

23 MR. DUPONT: Paragraph 28 to my notice of
24 deposition, participation by you, your employees,
25 and your representatives in meetings, groups, and

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01 committees of the American Petroleum Institute,
02 Manufacturing Chemists' Association a/k/a
03 Chemical Manufactures Association a/k/a American
04 Chemistry Council during and prior to the
05 applicable period.

06 MR. SAYRE: Right. And, if you notice, if
07 you take a look at your first page, it's a notice
08 to Ashland. So the you is to Ashland; right?

09 MR. DUPONT: Are you instructing the witness
10 not to answer the question?

11 MR. SAYRE: I'm just trying to understand so
12 that I can make a record. I'm trying to
13 understand what you're doing here.

14 DEFENSE COUNSEL: For the record, that's not
15 one of the categories that Dr. Keenan was
16 produced for.

17 MR. SAYRE: Correct. And we've objected to
18 category number 28. And it's directed to
19 Ashland, not Dr. Keenan personally.

20 I don't want to get into a long motion fight
21 with you, Andrew, but this is really beyond the
22 pale. You're going to leave me no choice. You
23 cannot question him as an individual.

24 MR. DUPONT: Your interference with the
25 deposition and -- well, I'm going to ask my

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01 question. If you want to stop the deposition and
02 if you want to tell the witness not to answer a
03 question, that's your prerogative.

04 MR. SAYRE: How much more do you have on
05 this? How much more do you have on this?

06 MR. DUPONT: On what?

07 MR. SAYRE: Let's start with the deposition.
08 Because I thought we were close to being done.

09 Look, I don't want to have a long motion
10 fight with you about something that's
11 inconsequential. We've got trial in just a few
12 weeks. I want to get ready for trial, not fight
13 a long motion battle. But you know this is not
14 proper, Andrew.

15 MR. DUPONT: No, actually, I don't. I don't.
16 And your objections are taking a lot more time
17 than it would to get answers to the question.

18 MR. SAYRE: Ask your question again.

19 BY MR. DUPONT:

20 Q. Dr. Keenan, while you were employed by the
21 American Petroleum Institute, did you become aware
22 that part of the purpose of the American Petroleum
23 Institute was to advocate on behalf of its members?

24 MR. SAYRE: Same objections. Beyond the
25 scope of the depo. You can answer.

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01 A. While I worked there I learned that American
02 Petroleum Institute was set up like a petroleum
03 company, every business division that a typical
04 petroleum company would have and that we worked for
05 common interests among the petroleum industry. So my
06 area, toxicology, we did testing of refinery streams
07 because that was of common interest and it didn't make
08 sense for each petroleum company to test the streams
09 multiple times. It was more efficient to do it once.
10 So in that way, yes, they did work on behalf.

11 Outside of the area of toxicology, I don't
12 know if I -- I would only be speculating on what
13 because I didn't really work there, that was my first
14 job out of college so I'd say my level of
15 understanding of how the trade association was working
16 is not -- I'm not able to answer that question.

17 Q. Did the American Petroleum Institute submit
18 information to regulatory bodies on topics that were
19 relevant to the business of its members?

20 MR. SAYRE: Beyond the scope of the
21 deposition notice, beyond the scope of Ashland.
22 He's also said he didn't know, it was his first
23 job out of college. Lacks foundation, calls for
24 speculation.

25 You can answer.

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01 A. They did submit comments to the regulatory
02 bodies, but they were typically work groups that
03 included members of the petroleum industry at member
04 companies.

05 Q. Did the American Petroleum Institute submit
06 comments or information to OSHA, for example, as it
07 related to benzene?

08 MR. SAYRE: Objection. Beyond the scope of
09 the deposition, beyond the scope of anything
10 having to do with Ashland. It also calls for
11 speculation, lacks foundation.

12 A. I know that during my time period there that
13 there were some interactions with American Petroleum
14 Institute, its member companies, and some outside law
15 firms on benzene.

16 MR. DUPONT: Let's pull up the PDF of the
17 document that begins with 77 API, please. And
18 let's mark this as the next exhibit to the
19 deposition.

20 (Plandtiffs' Exhibit No. 9 was marked for
21 identification.)

22 MR. SAYRE: And I will assert the same
23 objections I've made for every document that's
24 been shown digitally. It's improper and unfair
25 to the witness. He can't peruse the document.

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01 I'd also add, any question with regard to the
02 Shanghai Health Study, the witness has already
03 said that he's not aware of Ashland having
04 received a copy of it.

05 Q. Dr. Keenan, do you know what the Shanghai
06 Health Study was?

07 A. I don't have any direct knowledge of the
08 study, no.

09 Q. Do you have indirect knowledge of what the
10 Shanghai Health Study was?

11 A. I vaguely know that it was a -- some type of
12 investigation into benzene exposure in China.

13 Q. And was that a investigation that was
14 financially sponsored by some members of the American
15 Petroleum Institute?

16 MR. SAYRE: Objection. Beyond the scope of
17 the deposition, vague and ambiguous, calls for
18 speculation, lacks foundation.

19 A. It is my understanding there was a subgroup
20 of companies that funded the studies.

21 Q. Do you know who Patsy Clegg is?

22 A. I do not.

23 Q. So what we're looking at is the first page of
24 a PDF entitled The Shanghai Health Study dated June
25 22, 2005. Now, 2005, was Ashland again involved with

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01 the American Petroleum Institute?

02 MR. SAYRE: Same objections.

03 A. I believe that we were still involved from
04 the standpoint of the petroleum additives for the
05 motor oils. Beyond that, in 2005 we would have
06 joint-ventured the petroleum company with Marathon at
07 that time period and would not have any direct
08 relationship with API beyond those motor oil studies.

09 MR. DUPONT: Let's turn to PDF page 12 of
10 this exhibit, please.

11 THE VIDEO TECHNICIAN: Sorry. Just trying to
12 get this oriented. There we go.

13 BY MR. DUPONT:

14 Q. Dr. Keenan, we're looking at another page of
15 the exhibit on The Shanghai Health Study. It's dated
16 June 22, 2005, and there's a page here that has a
17 titled Benzene Health Research Consortium. Are you
18 familiar with the term -- the name Benzene Health
19 Research Consortium being used to describe the
20 companies from the American Petroleum Institute that
21 financially sponsored The Shanghai Health Study?

22 MR. SAYRE: Objection to the question. It
23 calls for speculation, lacks foundation.

24 A. No, I'm not familiar with this organization.

25 Q. On this page of the exhibit it's written that

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01 Marathon/Ashland is providing additional support. Do
02 you see that?

03 A. I do.

04 Q. Does this help you remember whether or not
05 Ashland was providing financial support to The
06 Shanghai Health Study?

07 MR. SAYRE: Objection. Misstates testimony.
08 He hasn't authenticated the document, so how
09 would it refresh his recollection.

10 You can answer.

11 A. Well, if you go back to some of my prior
12 answers you would recognize that Marathon and Ashland
13 were in a joint venture. It was a separate company at
14 that point. It wasn't really Ashland that was dealing
15 with this. So I would not have any knowledge of what
16 was going on here.

17 Marathon Ashland Petroleum, it was called
18 MAP, and that's what this is referring to because of
19 the time period of 2005 was a joint venture at that
20 time period operated by oversight committee -- well,
21 by Marathon primarily and Ashland was like a 40
22 percent member or 38 percent, I think, we owned in the
23 company, but we did not operationally manage that
24 company so I had no direct knowledge of what was going
25 on with that.

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01 Q. So Ashland was a 38 percent owner of
02 Marathon, Ashland Petroleum, in 2005?

03 A. That's my understanding. I could be a little
04 bit wrong on the percentages, but it was something
05 like that.

06 Q. Do you know how much money was provided to
07 the researchers of The Shanghai Health Study to the
08 Benzene Health Research Consortium?

09 MR. SAYRE: Objection. Lack of foundation,
10 calls for speculation.

11 A. I have no idea.

12 MR. SAYRE: The question assumes money was
13 paid, et cetera.

14 MR. DUPONT: Let's go to the next document,
15 which is 80 API, the PDF.

16 MR. SAYRE: Same objections with regard to
17 the documents being produced digitally. It's
18 unfair to the witness for all the reasons I've
19 stated before.

20 MR. DUPONT: And we'll mark this as the next
21 exhibit to the deposition.

22 (Plaintiffs' Exhibit No. 10 was marked for
23 identification.)

24 BY MR. DUPONT:

25 Q. Dr. Keenan, we're looking at the first page

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01 of the document that has the title at the top
02 International Leveraged Research Proposal. Do you see
03 that?

04 A. I do.

05 Q. And underneath that title there's a section
06 of the document that says "Project Description." And
07 the first sentence says, "The proposed research is an
08 investigation of the effects and dose response of
09 hematological effects of benzene exposure in a
10 population of workers in Shanghai, China (PRC) to
11 respond to allegations from a nationwide study of
12 benzene-exposed workers in over 50 industries by
13 researchers from the United States National Cancer
14 Institute and the Chinese Academy of Preventative
15 Medicine." Do you see that?

16 A. I do.

17 Q. Do you understand this to be referring to The
18 Shanghai Health Study?

19 MR. SAYRE: I object to the question. He's
20 already stated that he's unaware of the substance
21 of the study and now you're asking him questions
22 about what it says. It's clearly harassing the
23 witness. It's challenging him to tell you again
24 he has no basis for his answers with regard to
25 anything because he's never seen this document.

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01 I warn you, Counsel, even if I let him answer
02 I may seek sanctions. This is getting
03 outrageous.

04 You can answer.

05 THE WITNESS: Okay. Could you reread the
06 question.

07 (The question was read by the reporter.)

08 A. I don't know whether it refers to The
09 Shanghai Health Study or not. That does say Shanghai
10 in that sentence, but I don't know.

11 BY MR. DUPONT:

12 Q. You do understand that the Shanghai Health
13 Study was a study of exposure to benzene in workers in
14 Shanghai, China?

15 MR. SAYRE: Objection. Asked and answered.

16 A. That would be my assumption, but since I had
17 no direct involvement with this and didn't review any
18 of the documents, that's only an assumption.

19 MR. SAYRE: Move to strike all the testimony
20 with regard to The Shanghai Health Study on the
21 basis of assumptions.

22 Q. There's another section of this first page
23 that says "Background. Describe the significant
24 issues of concerns to global petroleum industry that
25 the research would effect." Do you see that?

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01 A. I do.

02 Q. And the first point under that section says,
03 "The expected health effects of ambient air
04 concentrations of benzene currently drive calls for
05 the reformulation of motor gasoline which would have
06 massive financial --"

07 THE COURT REPORTER: I'm sorry. I need the
08 question again.

09 MR. DUPONT: Sure.

10 BY MR. DUPONT:

11 Q. The first point under that section of the
12 document says, "The expected health effects of ambient
13 air concentrations of benzene currently drive calls
14 for the reformulation of motor gasoline which would
15 have massive financial impacts on petroleum refiners."
16 Do you see that?

17 A. I do.

18 Q. Was Ashland following, in the 2000s,
19 regulations as they related to benzene in products?

20 A. Could you repeat the question. I'm not sure
21 I understood you.

22 Q. Sure. Was Ashland following regulations
23 related to benzene in products during the 2000s?

24 A. We were following regulations, but in regard
25 to what type of regulations are you asking about? We

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01 were no longer -- around mid 2000 we were no longer in
02 the refining industry.

03 Q. Was Marathon Ashland Petroleum refining
04 gasoline in the mid 2000s?

05 A. I've never been employed by Marathon Ashland
06 Petroleum. I have no way of knowing. My assumption
07 is, yes, they were because they sold it, but I don't
08 know that.

09 MR. SAYRE: I'm going to move to strike on
10 the basis that's assumption. Also, the
11 questioning is outside of the notice.

12 Q. In the section of the document, the last
13 bullet point states, "Litigation alleging induction of
14 various forms of leukemias and other hematopoietic
15 diseases from exposure to petroleum-derived benzene
16 result in millions of dollars of expenses to
17 industry." Do you see that?

18 A. I do.

19 Q. Was Ashland aware that when The Shanghai
20 Health Study research was being proposed that one of
21 the considerations for the research was the cost to
22 industry either through regulations or litigation
23 relating to exposure to benzene?

24 MR. SAYRE: So I'm going to object to the
25 question. You've not established that --

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01 DEFENSE COUNSEL: Vague and ambiguous. Calls
02 for speculation. Outside the scope.

03 MR. SAYRE: I'll finish my objection. You've
04 not established that Ashland was aware of this
05 study and then you've assumed that in your
06 question as some sort of have you stopped beating
07 your wife type question. Again, harassing the
08 witness, wasting time.

09 You can tell him again.

10 THE WITNESS: Could you repeat the -- reread
11 the question. I'm sorry.

12 (The question was read by the reporter.)

13 A. I can't give you any more than what this
14 document says. I have no idea what the foundation or
15 basis of this document was. I've never seen it
16 before. I can't answer one way or the other.

17 BY MR. DUPONT:

18 Q. Was Ashland approached by members of the
19 American Petroleum Institute to provide funding or
20 support to The Shanghai Health Study or the Benzene
21 Health Research Consortium?

22 A. Not that I'm aware of.

23 Q. Was Marathon Ashland Petroleum approached by
24 members of the American Petroleum Institute to provide
25 funding to the Benzene Health Research Consortium for

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01 The Shanghai Health Study?

02 MR. SAYRE: Objection. Outside the scope of
03 the deposition notice.

04 You can answer.

05 A. I would have no idea. I was not involved in
06 that Marathon Ashland Petroleum.

07 THE VIDEOGRAPHER: Mr. DuPont, this is the
08 videographer at the deposition. I have five
09 minutes left before I need to change my media.

10 MR. DUPONT: Sure.

11 THE VIDEOGRAPHER: Thank you.

12 MR. DUPONT: Pull up the PDF, please, that
13 has the title Exhibit Number 5 on it, Ph.D.

14 THE VIDEO TECHNICIAN: You said pull up
15 Exhibit Number 5?

16 MR. DUPONT: Yes. Begins 99659, Exhibit
17 Number 5. Dr. Keenan -- and let's mark this as
18 the next exhibit to the deposition, please.

19 (Plaintiffs' Exhibit No. 11 was marked for
20 identification.)

21 MR. SAYRE: Same objections with regard to
22 producing these records digitally. It's unfair
23 to the witness. He can't peruse the document. I
24 can't see the document.

25 BY MR. DUPONT:

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01 Q. Dr. Keenan, looking at the first page of what
02 we've marked as the next exhibit that begins with
03 Bates number ASH-314, is this an Ashland hazard
04 determination study for toluene?

05 A. Ashland hazard determination document for
06 toluene.

07 Q. And how did Ashland use the hazard
08 determination documents that it prepared?

09 A. We reviewed, for many chemicals and solvents,
10 health hazards of the products themselves. So in this
11 page here you can see Eye and you can see Skin Contact
12 as to the endpoints. There were multiple endpoints
13 and we used -- we evaluated the literature and came up
14 with a classification for that and that classification
15 then would relate to hazard warnings for the MSDS and
16 for the label. And that's what the purpose of this
17 was.

18 So we would uniformly provide the warnings
19 across products. So if toluene was in three or four
20 different products, the same warning for toluene would
21 be carried by all of those products.

22 Q. Was this hazard determination document
23 provided by Ashland to customers that purchased
24 toluene from it?

25 A. At times --

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01 DEFENSE COUNSEL: Calls for speculation.

02 A. At times it was provided. It was upon
03 request and we -- but we didn't routinely provide
04 this. And we would usually alter the document by
05 taking off the finding because it was internal
06 document, internal purposes for those findings as our
07 own classification system which may or may not
08 correspond to theirs.

09 Q. If a Ashland customer that was buying toluene
10 from Ashland asked for information about the health
11 hazards of toluene or anything in toluene, is this the
12 document that Ashland would have provided to them?

13 DEFENSE COUNSEL: Calls for speculation.

14 Vague and ambiguous.

15 MR. SAYRE: Yeah, it sounds like a
16 hypothetical. You can answer.

17 A. The MSDS and label provided the summary of
18 this information. If they wanted some more
19 information they would ask a specific question as to
20 relating to why we might have provided a hazard
21 warning for something. And in that situation we might
22 have extracted pieces of this document and provided it
23 to them as our basis for that hazard warning. And --
24 but most of the time we would not provide the whole
25 document.

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01 THE VIDEOGRAPHER: Sir, I'm going to need to
02 change my media.

03 MR. DUPONT: Sure.

04 THE VIDEOGRAPHER: We're going off the
05 record. The time is 3:30 p.m.

06 (Recess from 3:30 p.m. to 3:34 p.m.)

07 THE VIDEOGRAPHER: We're back on the record.
08 The time is 3:34 p.m. This is media unit number
09 three.

10 MR. DUPONT: Can we turn to page 21 of the
11 document, which has the Bates number ASH-334 on
12 it.

13 THE VIDEO TECHNICIAN: Page 21; right?

14 MR. DUPONT: Correct.

15 BY MR. DUPONT:

16 Q. Dr. Keenan, does page 21 of this exhibit,
17 which is the hazard determination document created by
18 Ashland for toluene, list various sources that were
19 relied upon by Ashland in creating the hazard
20 determination document?

21 A. Yes.

22 Q. And does that list of sources relied upon by
23 Ashland in creating the hazard determination document
24 continue on to the next page, page 22?

25 A. I believe so. There's more than -- yes. I

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01 can see 22 now, yes.

02 Q. And how was it that Ashland determined which
03 documents would be reviewed and relied upon for
04 creating this hazard determination document?

05 DEFENSE COUNSEL: Calls for speculation.

06 A. We would -- based upon access to databases,
07 we had organizations that we belonged to, textbooks
08 that we had in place, and then we would also review
09 documents that may come into our possession as they
10 were provided to us.

11 Q. Now, if you look to the bottom of this
12 document, if we could highlight the dates towards the
13 bottom, does this tell us dates that the document was
14 first prepared on and then several dates that it was
15 updated on?

16 A. Yes.

17 Q. So it appears that the document was first
18 prepared October 20, 1993?

19 A. That's the date, yes, that's there.

20 Q. And then it was updated again on July -- in
21 July 1996, October 22, 2001, July 16, 2003, and June
22 29, 2004?

23 A. Yes.

24 Q. Now, at this period of time from 1993 to
25 2004, is it correct that Ashland was no longer

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01 refining toluene?

02 A. Some time in that time frame, yes, the
03 petroleum company would have not been part of Ashland
04 anymore.

05 Q. Do you recall when it was that Ashland
06 stopped refining toluene?

07 A. No, I don't recall the exact date. But we
08 still sold toluene.

09 Q. Thanks. So when Ashland stopped refining
10 toluene but was selling toluene manufactured by other
11 companies, would it receive material safety data
12 sheets for toluene from the companies that supplied
13 Ashland the toluene?

14 A. We would receive material safety data sheets
15 from other companies, but we also had databases that
16 had MSDSs from other companies for toluene and we may
17 also review data sheets from other companies that were
18 not necessarily our suppliers.

19 Q. Do you know who Ashland's suppliers of
20 toluene were in 2003, 2004?

21 A. No, I do not.

22 THE COURT REPORTER: Mr. DuPont, can you get
23 closer to the mic?

24 MR. DUPONT: Is that better?

25 THE COURT REPORTER: Yes.

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01 BY MR. DUPONT:

02 Q. In creating this hazard determination
03 document, is it correct that Ashland reviewed toluene
04 MSDS from several other companies including Texaco,
05 Shell, Exxon Mobil, Phillips 66, and Coke?

06 MR. SAYRE: Objection to the form of the
07 question. Compound. You can answer.

08 A. Those companies' data sheets are listed as
09 references that you've mentioned.

10 Q. Do you know why it was that Ashland selected
11 those companies' MSDS for toluene to review and rely
12 on in creating this hazard determination document?

13 A. I do not know exactly why they were -- each
14 one of those were included, no, I don't know.

15 Q. One of the toluene material safety data
16 sheets that Ashland is referring to in relying on the
17 information on the health hazards of toluene is an
18 Exxon Mobil toluene MSDS dated February 27, 2003,
19 that's reference number 24?

20 A. Yes, I see that.

21 Q. And based on the notes at the bottom of 22,
22 it looks like that MSDS was added as a reference on
23 July 16, 2003?

24 A. No. I would interpret that that we received
25 a new MSDS from Exxon Mobil for that product.

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01 Q. Okay. So on July 16, 2003, Ashland received
02 a new MSDS from Exxon Mobil for toluene?

03 A. That would be my impression, yes.

04 Q. And why was Exxon Mobil sending toluene MSDS
05 to Ashland in 2003?

06 A. I don't know why they sent the data sheet at
07 that time period.

08 Q. Was there a practice at Ashland to receive
09 material safety data sheets from its suppliers of
10 toluene?

11 A. There is, but they may not have -- we may
12 have come across it too and, as I said, we had data
13 sheet databases that we pulled from too. I don't know
14 exactly why that was coming in at that time or
15 updated.

16 MR. DUPONT: To our video technician, can you
17 pull up the Exxon Mobil MSDS for toluene dated
18 February 27, 2003.

19 THE VIDEO TECHNICIAN: I'm sorry. Is that
20 the name of the document?

21 MR. DUPONT: It begins with Toluene 11. I
22 e-mailed it to you.

23 THE VIDEO TECHNICIAN: I'm just receiving
24 that right now.

25 MR. DUPONT: We will mark this as next to the

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01 document to the deposition. Excuse me.

02 (Plaintiffs' Exhibit No. 12 was marked for
03 identification.)

04 BY MR. DUPONT:

05 Q. Dr. Keenan, we'll blow up for you the top
06 portion of the first page of the document including
07 the title in section one so you can see a little
08 better.

09 MR. SAYRE: And I object to the document on
10 the basis that it's being shown in digital form,
11 it's not being given to the witness to peruse.
12 All the objections I made before I incorporate
13 herewith.

14 Q. Dr. Keenan, do you see that this is a Exxon
15 Mobil MSDS dated February 27, 2003, for toluene?

16 MR. SAYRE: Yes, I'm going to object to the
17 question on the basis that it seeks to have the
18 witness authenticate a document based on its
19 title in the document instead of asking the
20 witness whether he's ever seen the document
21 before. It's improper.

22 You can answer.

23 A. That's what the document says, Material
24 Safety Data Sheet for Exxon Mobil for toluene.

25 Q. Is this the same material safety data sheet

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01 for Exxon Mobil toluene that's reflected on the hazard
02 determination document that we just looked at?

03 MR. SAYRE: Object to the question on the
04 basis that it calls for speculation, lacks
05 foundation. You showed him the document, by the
06 way, in digital form when we can't look at the
07 whole thing and, as a result, you're trying to
08 get him to authenticate something that he's not
09 said he's seen yet.

10 So you can answer if you know.

11 A. I'd have to go back and verify the date. I'm
12 not sure.

13 Q. When you say verify the dates --

14 A. This says February 27, 2003. I want to see
15 if that's the document that was referred to on the
16 references in the toluene hazard determination.

17 MR. DUPONT: Great. To our video technician,
18 can we go back to the last exhibit and page 22 of
19 that exhibit, please.

20 THE VIDEO TECHNICIAN: What was the name of
21 it again? Actually, I have it right here. No,
22 that wasn't it. What was the name of the last
23 one? That's it. Page 22?

24 MR. DUPONT: Yes. Could you blow up
25 reference 24.

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01 THE WITNESS: Okay.

02 BY MR. DUPONT:

03 Q. So we're now showing to you reference number
04 24 from the Ashland hazard determination document for
05 toluene. Does reference 24, is that the Exxon Mobil
06 MSDS dated February 27, 2003, which is what we were
07 just looking at?

08 MR. SAYRE: Objection. Patently improper.

09 The witness has not seen the other document.

10 It's your showing him this document, it's not
11 from our business records.

12 You're asking him to authenticate a document
13 that you're representing to be that simply based
14 on the title and the date, which is improper, it
15 doesn't authenticate the document. Calls for
16 speculation, lacks foundation.

17 A. The reference here says Exxon Mobil MSDS
18 2/27/03. It matches the date on the other document,
19 but I don't know if exactly. I can't say a hundred
20 percent certainty that that's the same document.

21 Q. Do you recall discussing this material safety
22 data sheet during your deposition in the Robert Bruce
23 case?

24 A. The which case? I'm sorry.

25 Q. Robert Bruce.

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Keenan, Thomas

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01 A. No, I don't recall that case.

02 Q. When Ashland sold benzene during the 1970s,
03 specifically from 1970 to 1974, did it do so for
04 industrial uses?

05 A. I can't say with certainty. I mean, our
06 operations were industrial. I don't know all the
07 customers that we sold to, so I can't say one way or
08 the other whether all customers were industrial or
09 not.

10 Q. Do the labels for benzene used by Ashland in
11 the 1970s contain the statement "for industrial use
12 only"?

13 A. I'd have to see the label. I'm not sure that
14 that wasn't added on later. But I don't know when the
15 timing was but we did have a -- we did put that on our
16 labels at one time period and continued on, but I
17 don't know when they were at.

18 Q. Why did Ashland put the statement "for
19 industrial use only" on labels of benzene?

20 A. I don't have an answer to that. I don't know
21 one way or the other.

22 Q. Was the -- strike that.

23 Was the statement "for industrial use only"
24 something that appeared on labels of benzene used by
25 Ashland at some point in the 1970s?

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Keenan, Thomas

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01 MR. SAYRE: I will object to the question.

02 I'm not sure I understand "used by Ashland."

03 You can answer.

04 THE WITNESS: Could you reread the question.

05 BY MR. DUPONT:

06 Q. I'll re-ask the question.

07 A. Okay.

08 Q. At some point during the decade of the 1970s,
09 when Ashland sold benzene or a blend containing
10 benzene as an ingredient, did the statement "for
11 industrial use only" appear on the label?

12 A. Without seeing the label, I don't recall when
13 that was added. I don't know whether it was there
14 during that time period or not.

15 Q. In the 1970s, did Ashland follow a format for
16 how to prepare benzene labels?

17 A. My understanding that Ashland was trying to
18 mirror the Manufacturing Chemists' Associations
19 recommendations for benzene on their labels.

20 Q. And what documents in the Manufacturing
21 Chemists' Association had the recommendation for
22 benzene labeling?

23 A. I think it was the same one we've looked at
24 before, the material safety data sheet for benzene
25 from Manufacturing Chemists' Association. That's my

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01 recollection, but I would have to see the document to
02 be certain.

03 Q. Do you have any labels with you that were
04 used on benzene or blends containing benzene as an
05 ingredient sold by Ashland in the 1970s?

06 A. I do not have any labels on me at this point.

07 Q. When was Ashland first aware that benzene is
08 absorbed through the human skin?

09 A. I don't know the exact time period of that.

10 Q. If benzene absorbed into the human skin was
11 something that was discussed in the API's
12 toxicological reviews on benzene, is that information
13 that Ashland would have received and known about
14 benzene being absorbed through human skin when it
15 obtained those toxicological reviews on benzene?

16 MR. SAYRE: Objection. Calls for
17 speculation.

18 A. Are you referring to the 1960 document that
19 we've seen earlier today?

20 Q. Right. We discussed both a 1960 document,
21 which you looked at, and also that there was a 1948
22 API toxicological review on benzene.

23 A. Yes. I don't recall exactly what those
24 documents said. If they referred to dermal absorption
25 then Ashland would have had possession of those

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01 documents, but I don't know whether they do without
02 reviewing it.

03 MR. DUPONT: All right. Those are all the
04 questions I have.

05 MR. SAYRE: Any other questions? Hearing
06 none, we are done.

07 THE VIDEOGRAPHER: This concludes the
08 deposition. The time is 3:54 p.m.

09 (This deposition concluded at 3:54 p.m.)
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01 RE : Jimmy H. Thomas v. Akzo Nobel Coatings
02 DEPO OF: Thomas Keenan
03 TAKEN : June 7, 2019
04
05 EXCEPT FOR ANY CORRECTIONS
06 MADE ON THE ERRATA SHEET BY
07 ME, I CERTIFY THIS IS A TRUE
08 AND ACCURATE TRANSCRIPT.
09 FURTHER DEPONENT SAYETH NOT.
10
11 THOMAS KEENAN
12
13 STATE OF FLORIDA)
14) SS:
15 COUNTY OF SARASOTA)
16
17 Sworn and subscribed to before me this
18
19 _____ day of _____, 2019.
20
21 PERSONALLY KNOWN _____ OR I.D. _____
22
23 _____
24 Notary Public in and for
25 the State of Florida at
26 Large.
27 My commission expires:
28
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01 ERRATA SHEET

02 RE : Jimmy H. Thomas v. Akzo Nobel Coatings

03 DEPO OF: Thomas Keenan

04 TAKEN : June 7, 2019

05

06 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

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24 State of Florida)

25 County of Sarasota)

26

27 Under penalties of perjury, I declare that I have read

28 the deposition transcript and it is true and correct

29 subject to any changes in form or substance entered

30 here.

31

32				
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33	Date	Thomas Keenan
----	------	---------------

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Keenan, Thomas

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01 CERTIFICATE OF OATH OF WITNESS

02

03 STATE OF FLORIDA

04 COUNTY OF SARASOTA

05

06 I, MARY ANN SMITH, Registered Professional

07 Reporter, Registered Merit Reporter, Notary

08 Public, State of Florida, certify that the

09 witness, Thomas Keenan, personally appeared

10 before me on the 7th day of June, 2019, and was

11 duly sworn by me.

12

13 WITNESS my hand and official seal this 21st

14 day of June, 2019.

15

16

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19

20 _____
Mary Ann Smith, RPR, RMR

21 Notary Public - State of Florida

22 My Commission No. FF 977637

23 Expires: May 17, 2020

24

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01 REPORTER'S DEPOSITION CERTIFICATE

02

03 STATE OF FLORIDA

04 COUNTY OF MANATEE

05

06 I, MARY ANN SMITH, Registered Professional
07 Reporter, Registered Merit Reporter, certify that I
08 was authorized to and did stenographically report the
09 deposition of Thomas Keenan, the witness herein, on
10 June 7, 2019; that a review of the transcript was
11 requested; that the foregoing transcript, pages 1
12 through 156 inclusive is a true and complete record of
13 my stenographic notes of the deposition by said
14 witness; and that this computer-assisted transcript
15 was prepared under my supervision.

16 I further certify that I am not a relative,
17 employee, attorney or counsel of any of the parties,
18 nor am I a relative or employee of any of the parties'
19 attorney or counsel connected with the action.

20

21 DATED this 21st day of June, 2019, at
22 Lakewood Ranch, Manatee County, Florida.

23

24

25

26 <%14070,Signature%>

27

28 Mary Ann Smith, RPR, RMR

29

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Keenan, Thomas

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01 Thomas v. Akzo

02 Thomas Keenan

03 INSTRUCTIONS TO THE WITNESS

04 Please read your deposition over
05 carefully and make any necessary corrections.
06 You should state the reason in the
07 appropriate space on the errata sheet for any
08 corrections that are made.

09 After doing so, please sign the errata
10 sheet and date it.

11 You are signing same subject to the
12 changes you have noted on the errata sheet,
13 which will be attached to your deposition.

14 It is imperative that you return the
15 original errata sheet to the deposing
16 attorney within thirty (30) days of receipt
17 of the deposition transcript by you. If you
18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in
20 court.

21

22

23

24 3412943

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Transcript of Keenan, Thomas

Keenan, Thomas

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01 Thomas v. Akzo

02 Thomas Keenan

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24 3412943

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Keenan, Thomas

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01 Thomas v. Akzo

02 Thomas Keenan

03 ACKNOWLEDGMENT OF DEPONENT

04 I, _____, do

05 hereby certify that I have read the foregoing

06 pages and that the same is a correct

07 transcription of the answers given by

08 me to the questions therein propounded,

09 except for the corrections or changes in form

10 or substance, if any, noted in the attached

11 Errata Sheet.

12

13

14 DATE

SIGNATURE

15

16

17

18

19

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24 3412943

25

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Keenan, Thomas

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Transcript of Keenan, Thomas

Exhibit 4

Transcript Report

Masaitis, John

Plaintiff designations in yellow

US Steel counter designations in green

Transcript of Masaitis, John

Saturday, August 15, 2020

Full Transcript Report

Designation Legend

MASAITIS, JOHN - (DAVIS) VOL 1

Transcript of Masaitis, John

Rhyne Trial Master

01 IN THE COURT OF COMMON PLEAS
02 IN AND FOR PHILADELPHIA COUNTY
03
04 - - -
05
06 ESTATE OF RONALD DAVIS, : MARCH TERM, 2009
07 :
08 Plaintiff, :
09 :
10 vs. :
11 :
12 :
13 SUNOCO, INC. (R&M), et :
14 al., :
15 :
16 Defendants. : No. 01835

Tuesday, November 9, 2010

Videotaped Deposition of JOHN
MASAITIS, taken at the Law Offices of Dickie
McCamey & Chilcote, Two PPG Plaza, Suite 400,
Pittsburgh, Pennsylvania 15222, beginning at
9:58 a.m., before Brigitte A. Strain, a
Federally Certified Registered Professional
Reporter, Certified LiveNote Reporter and a
Notary Public.

VERITEXT NATIONAL COURT REPORTING COMPANY
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, Pennsylvania 19103

2

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Page 2

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43

3

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37 and Sunoco, Inc. (R&M)
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01 APPEARANCES (continued):
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32 Also Present:
33 Adrisen Young, Video Technician
34
35
36
37

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04 Testimony of: John Masaitis

05

06 By Mr. DuPont.....14, 180

07 By Mr. Neuer..... 160, 186

08 By Mr. Riley.....179

09

10 - - -

11 E X H I B I T S

12 - - -

13

14 EXHIBIT NUMBER DESCRIPTION PAGE MARKED

15

16 Masaitis 1 Davis Deposition

17 Materials 18

18 Masaitis 2 Invoice, THAN 2209 51

19 Masaitis 3 MSDS, Benzene, Benzol

20 H-D 649-650 68

21

22 Masaitis 4 USS Chemicals Safety

23 Data Sheet,

24 USS 02617A-2619 85

25

26 Masaitis 5 USS Chemicals Safety

27 Data Sheet, Benzene

28 USS 05889-891 87

29

30 Masaitis 6 Shipping Paper

31 USS 02519 92

32 Masaitis 7 Product Shipping

33 Data Sheet

34 USS 02520 99

35 Masaitis 8 Benzene

36 USS 01246 101

37

38 Masaitis 9 Product Shipping

39 Data Sheet, Benzene

40 USS 02517-18 100

41

42 Masaitis 10 Label, Benzene

43 USS 00296-97 102

44

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01	EXHIBITS (continued):		
02	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED
03	Masaitis 11	Chemical Safety Data	
04		Sheet SD-2, Benzene	
05		USS 0298-313	104
06	Masaitis 12	USS Chemicals - Benzene	
07		USS 00316	114
08			
09	Masaitis 13	MCA Chem-Card, Benzene	
10		USS 00314	114
11	Masaitis 14	Cargo Information Card	
12		Benzene, USS 00315	114
13			
14	Masaitis 15	Environmental Health	
15		Monitoring Manual	
16		USS 2298-2361	118
17			
18	Masaitis 16	Health Hazards in use	
19		Of Solvents for Motor	
20		Vehicles	
21		USS 03850-3859	127
22	Masaitis 17	MSDS	
23		USS 08892-93	152
24			
25	Masaitis 18	Safety Data Sheet	
26		For Raffinate	
27		USS 16-22	154
28			
29	Masaitis 19	Letter, 11/13/52	
30		To E.C. Myers	
31		USS 16982	189
32			
33			
34			
35			
36			
37			
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01 DEPOSITION SUPPORT INDEX
02 INSTRUCTION NOT TO ANSWER:
03 Page Line
04
05 (None)
06
07
08 REQUEST FOR PRODUCTION OF DOCUMENTS:
09 Page Line Description
10
11 (None)
12
13 STIPULATIONS:
14 Page Line
15
16 13 19
17
18 QUESTIONS MARKED:
19 Page Line
20
21 (None)
22
23
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01 JOHN MASAITIS

02 VIDEO TECHNICIAN: My name is
03 Adrisen Young representing Veritext.
04 The date today is November 9, 2010,
05 and the time is approximately 9:58
06 a.m.

07 This deposition is being held at
08 the office of Dickie McCamey &
09 Chilcote, located at Two PPG Place,
10 Suite 400, Pittsburgh, Pennsylvania
11 15222.

12 The caption of this case is
13 Ronald Davis versus Sunoco
14 Incorporated, et al., filed in the
15 Court of Common Pleas of Philadelphia
16 County, March Term 2009.

17 The name of the witness is John
18 Masaitis.

19 At this time will the attorneys
20 present please identify themselves for
21 the record.

22 MR. DuPONT: Andrew DuPont from
23 the Locks Law Firm for the Estate of
24 Ronald Davis.

25 MR. NEUER: Ray Neuer here for T

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Page 13

01 JOHN MASAITIS
02 H Agriculture and Nutrition.
03 MS. GALLAGHER: Katherine
04 Gallagher for Sherwin Williams.
05 MR. HAMILTON: Michael Hamilton
06 for Rycoline Products.
07 MS. NEGOVAN: Julie Negovan for
08 Handschy Industries.
09 MS. SMITH: Lea Ann Smith,
10 United States Steel Corporation.
11 MR. SYKES: Phillip Sykes for
12 U.S. Steel.
13 MR. CAIRONE: Matt Cairone for
14 United States Steel Corporation.
15 VIDEO TECHNICIAN: Our court
16 reporter, Brigitte Strain of Veritext,
17 will please swear in the witness.
18 - - -
19 (It is hereby stipulated and
20 agreed by and among counsel for the
21 respective parties that sealing,
22 certification and filing are waived,
23 that all objections, except as to the
24 form of the question, be reserved
25 until the time of trial, and that an

Masaitis, John

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01 JOHN MASAITIS
02 objection by one defendant inures to
03 the benefit of all defendants.)
04 - - -
05 JOHN MASAITIS, after having been
06 first duly sworn, was examined and
07 testified as follows:

08 - - -
09 EXAMINATION
10 - - -

11 BY MR. DuPONT:

12 Q. Good morning, Mr. Masaitis.

13 A. Good morning.

14 Q. Am I pronouncing your name
15 correctly?

16 A. That's good enough.

17 Q. All right. If I get it wrong,
18 please let me know.

19 A. No, that's fine.

20 Q. Thank you. My name is Andrew
21 DuPont, we introduced ourselves briefly this
22 morning. I am the attorney for the Estate of
23 Ronald Davis, I'm here to take your
24 deposition. I know you've given depositions
25 in the past, but I'll briefly review the

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01 JOHN MASAITIS

02 rules.

03 If I ask you a question that

04 you do not understand, please let me know.

05 If you answer the question, we'll assume that

06 you answered the question that I asked and

07 that you understood that question. Is that

08 okay?

09 A. Yes.

10 Q. We should not talk over each

11 other, because that makes our court

12 reporter's job difficult. So I will allow

13 you to finish your response before I begin my

14 next question. If you'll allow me to finish

15 my question before you begin your response, I

16 would appreciate that as well.

17 A. Yes.

18 Q. All right. If you need a break

19 at any point in time, let us know that. I

20 just ask that you answer any question that's

21 pending before you take a break. Okay?

22 A. Sure.

23 Q. Sir, what --

24 MR. BIEDRZYCKI: Andrew, before

25 you begin, this is Rich Biedrzycki,

Masaitis, John

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01 JOHN MASAITIS

02 can we just have a stipulation that an
03 objection by one is an objection by
04 all.

05 MR. DuPONT: Yes, we've been
06 stipulating at all these depositions
07 that an objection by one is an
08 objection by all. And that the -- all
09 objections, except as to form, are
10 preserved until the time of trial.

11 MR. BIEDRZYCKI: Thanks.

12 BY MR. DuPONT:

13 Q. All right. Okay. When was the
14 last time you gave a deposition?

15 A. Last summer.

16 Q. Do you recall the name of the
17 case?

18 A. No, I don't.

19 Q. What did that case involve?

20 A. That case was benzene
21 raffinate, similar to this.

22 Q. Before we get into your prior
23 testimony, I would like to ask you what you
24 did to prepare for your deposition today?

25 A. I went through material that

Object
to
"Before
we get
into
your
prior
testimo
ny"

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01 JOHN MASAITIS
02 was sent to me by the law firm representing
03 U.S. Steel. I also met with the U.S. Steel
04 attorneys yesterday.

05 Q. What material was sent to you
06 that you reviewed?

07 A. I had a book of it over here
08 (indicating.)

09 Q. All right. Is that accessible
10 to you right now? You don't have to get up.
11 If you can point it to me, I'd be happy to
12 get it for you.

13 A. Yes.

14 Q. This one here, in the black
15 book?

16 A. Yes.

17 Q. Let me hand that to you.

18 A. Thank you. Thank you very
19 much.

20 Q. You're welcome.

21 And can you tell me generally,
22 what does that binder consist of?

23 A. There's a table of contents.

24 It shows the deposition notice, Amended
25 Complaints, U.S. Steel discovery responses,

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01 JOHN MASAITIS
02 deposition transcripts, U.S. Steel records of
03 sales.

04 Q. Let me stop you there. If we
05 could -- if you don't mind, could I take the
06 Table of Contents out and mark that as an
07 exhibit just so I have a record of what you
08 have reviewed?

09 A. Sure.

10 Q. Thank you.

11 - - -

12 (Whereupon the document was
13 marked, for identification purposes,
14 as Masaitis Exhibit Number 1.)

15 - - -

16 BY MR. DuPONT:

17 Q. Sir, approximately how much
18 time did you spend reviewing the materials
19 that are listed on Exhibit 1?

20 A. Well, it was sent to me last
21 week. I would say maybe eight hours, ten
22 hours, going through it.

23 Q. And are you compensated for
24 your time in preparing for depositions and
25 testifying at depositions on behalf of U.S.

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01 JOHN MASAITIS

02 Steel?

03 MR. CAIRONE: I object to the
04 form. It's two questions.

05 THE WITNESS: I don't charge for
06 the time that I spend testifying, but
07 I do charge for the industrial hygiene
08 consulting, preparation, that sort of
09 thing.

10 BY MR. DuPONT:

11 Q. Can you tell me what you mean
12 when you say you charge for the industrial
13 hygiene consulting, preparation?

14 A. Well, I'm an industrial hygiene
15 consultant. I have been since I retired, and
16 I consider this industrial hygiene consulting
17 because I am not charging for the time that I
18 am testifying.

19 Q. Okay. How much do you charge,
20 either on an hourly basis or otherwise, for
21 your consultant work?

22 A. 300.

23 Q. \$300 per hour?

24 A. Yes.

25 Q. Can you estimate for me

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01 JOHN MASAITIS

02 approximately how many hours per year you
03 work on behalf of U.S. Steel as an industrial
04 hygiene consultant?

05 A. This was the first activity
06 this year.

07 Q. How about last year, how many
08 hours did you spend doing that?

09 A. Oh, I would say 12, 14.
10 Something like that. Possibly 20. It's not
11 very often.

12 Q. Do you have a written agreement
13 or contract with U.S. Steel concerning your
14 work as an industrial hygiene consultant?

15 A. No.

16 Q. Do you testify as an expert on
17 behalf of U.S. Steel?

18 A. I have in the past.

19 Q. Do you know whether or not you
20 will be testifying as an expert in this
21 case --

22 A. No.

23 Q. -- for U.S. Steel?

24 A. No.

25 Q. No, you do not know or, no, you

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01 JOHN MASAITIS

02 will not be?

03 A. To my knowledge, I will not be.

04 Q. All right. Did you make any
05 kind of notes or memorandum as a result of,
06 or during the course of your reviewing the
07 materials that you have in front of you?

08 A. No.

09 Q. And did you say that you
10 received these materials last week?

11 A. Yes.

12 Q. Do you maintain your own
13 collection of materials, documents, things
14 like that, related to U.S. Steel?

15 A. No.

16 Q. Do you maintain your own
17 collection of materials relating to benzene
18 in general?

19 A. No.

20 Q. When did you first begin to
21 testify on behalf of U.S. Steel as an
22 industrial hygiene consultant?

23 A. I believe it was 1997, the year
24 after I retired.

25 Q. Do you understand that you're

Masaitis, John

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01 JOHN MASAITIS

02 here as the corporate representative of U.S.
03 Steel?

04 A. Yes.

05 Q. And that means you're speaking
06 on behalf of the corporation?

07 A. Yes.

08 Q. Did you testify as a corporate
09 representative of U.S. Steel prior to 1997?

10 A. I may have. I may have done
11 some testifying in '96 because as I was
12 sitting here now I was thinking I retired in
13 February of '96. And I think there may have
14 been some other litigation I represented the
15 corporation in. I think -- it could have
16 been something in asbestos in '96, later on,
17 after I retired.

18 Q. Okay. Have you testified or
19 been retained as an expert by any companies
20 other than U.S. Steel?

21 A. Yes.

22 Q. What companies are those?

23 A. I did some work for, I believe
24 it was Koppers. I have done work for other
25 companies shortly after I retired. I can't

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01 JOHN MASAITIS

02 recall. I've done consulting for The
03 Americanized Steel Institute on some
04 radiation matters. And I -- I -- I can't
05 recall. There weren't that many.

06 Q. Did your consulting work for
07 Koppers involve litigation? Was it given in
08 the context of litigation?

09 A. I believe I gave a deposition,
10 but I didn't go to trial.

11 Q. Okay. Did that case concern
12 benzene exposure?

13 A. No.

14 Q. Was there a particular toxin at
15 issue?

16 A. I believe it was regarding coke
17 emissions.

18 Q. Has all of your consulting work
19 for U.S. Steel, from 1997 to the present,
20 related to benzene exposure?

21 A. No.

22 Q. In what other areas of
23 litigation have you provided support?

24 A. Asbestos. That's primarily it,
25 asbestos and the benzene.

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01 JOHN MASAITIS

02 Q. Can you estimate for me how
03 many times you've testified on behalf of U.S.
04 Steel, either in a deposition or at trial, in
05 a case relating to benzene exposure?

06 A. I may have given six or eight
07 depositions.

08 Q. Have you ever testified at a
09 trial?

10 A. Yes.

11 Q. On how many occasions?

12 MR. CAIRONE: Andrew, to be
13 clear, are you talking about any trial
14 or a benzene trial?

15 MR. DuPONT: Good question.

16 BY MR. DuPONT:

17, Q. Have you ever testified at a
18 trial in a case concerning benzene exposure?

19 A. Yes. I recall one. I don't
20 think there were any others relating to
21 benzene. I can recall one.

22 Q. Do you recall the name of the
23 case where you testified at trial regarding
24 benzene exposure?

25 A. No.

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Page 25

01 JOHN MASAITIS

02 Q. Do you recall where the trial
03 was geographically?

04 A. It was -- was it in
05 Mississippi? Yes, Mississippi.

06 Q. Do you recall the name of the
07 attorney that represented the injured person?

08 A. It was Karlaps (phonetic).

09 MR. SYKES: No, he represented
10 U.S. Steel.

11 THE WITNESS: Represented U.S.
12 Steel.

13 MR. CAIRONE: The question was,
14 who represented the injured person.

15 THE WITNESS: Oh, the injured
16 person, I'm sorry. My hearing isn't
17 what it used to be either, I thought
18 you were talking about the attorney
19 for U.S. Steel. No, I don't.

20 BY MR. DuPONT:

21 Q. Okay. I will try and keep my
22 voice up. If at any point in time you can't
23 hear a question I'm asking, please let me
24 know and I'll --

25 A. Okay.

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02 Q. -- and I'll remember myself, or
03 remind myself to keep my voice up.

04 All right. I'd like to learn a
05 little bit about the background of U.S.
06 Steel. I have one of your prior deposition
07 transcripts that your counsel produced to me
08 and I want to just get a little more
09 information. Do I recall correctly that U.S.
10 Steel has been producing benzene since the
11 1920s?

12 A. U.S. -- I can't recall the
13 exact date, but when the coke by-product
14 plants came into operation, that's when U.S.
15 Steel started to produce benzene as a
16 by-product of those ovens, which was probably
17 in about 1920.

18 Q. Are you able to tell me where
19 U.S. Steel has ranked in terms of producers
20 of benzene in the United States since the
21 1920s? Understanding that it's changed over
22 time, but can you give me any sense of that?

23 A. No. Other than -- to my
24 knowledge, that we were producing quite a bit
25 during the thirties, forties, the war years,

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02 when a lot of steel was being made.

03 Q. Can you tell me, during the
04 1970s, where U.S. Steel ranked in terms of
05 producers of benzene in the United States?

06 A. No, I can't.

07 Q. Do you know whether they were
08 in the top ten?

09 A. I wouldn't know. It's a, you
10 know, correlation with the amount of steel
11 that is being produced. I -- I wouldn't
12 venture a guess.

13 Q. Okay. In how many locations
14 has U.S. Steel produced benzene?

15 A. Well, each location we had the
16 by-product, COG Mon operations. What do I
17 want to say? Six or eight.

18 Q. Is that consistent from the
19 1920s up through the -- I believe you
20 previously testified that in about the early
21 to mid 1980s, the benzene producing
22 operations of U.S. Steel kind of tailed off?

23 A. Let me correct that last
24 statement. Actually you said benzene. I was
25 looking at the light oil, which is -- benzene

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02 is a constituent of light oil. I think there
03 were only two or three plants where we
04 actually broke the light oil down to benzene,
05 toluene and xylene. So if I could correct
06 that last statement regarding the coke
07 by-product plants.

08 Q. All right. Let me see if I
09 understand that correctly. There have been
10 six to eight locations at which U.S. Steel
11 produced light oil, of which benzene, toluene
12 and xylene are components.

13 A. There were six plants, as I
14 recall, thereabouts, that produced coke. And
15 at those plants, the light oil was a
16 by-product of the coke. And at three plants,
17 I only recall that those three plants
18 produced benzene, toluene and xylene from the
19 light oil. They had a further extraction
20 process.

(21) Q. Was that further extraction
(22) process done through what's called a Udex
(23) unit, or has that technology changed over
(24) time?

(25) A. Well, we called it a BTX plant.

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02 But I think they only had the Udex process at
03 Claritin.

04 Q. So Claritin was one of the
05 plants where benzene was produced. What were
06 the other two plants where benzene was
07 produced?

08 A. I recall it being produced at
09 Gary Works and also Geneva Works.

10 Q. Gary Works is that in Gary,
11 Indiana?

12 A. Yes.

13 Q. During which years did U.S.
14 Steel produce benzene at the Claritin Works?

15 A. I can't say specifically when
16 the BTX plants went into operation, but I
17 would say it would be early on. We were
18 producing benzene in the twenties. There had
19 to be some type of extraction.

20 Q. And when did U.S. Steel stop
21 producing benzene at Claritin?

22 A. I think they're still producing
23 it.

24 Q. How about the Gary Works in
25 Gary, Indiana, when did U.S. Steel begin to

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02 operate that plant?

03 MR. CAIRONE: Let me put an
04 objection on the record. In fairness
05 to the witness, I don't think that
06 this was a subject notified for
07 deposition. So unless you can point
08 me to where it was, he hasn't been
09 prepared.

10 I'm going to let the question
11 go, but I want that on the record,
12 that this was not a subject for this
13 witness to be prepared.

14 BY MR. DuPONT:

15 Q. Okay. You can answer.

16 A. And the question was?

17 Q. Sure. Are you able to tell me
18 when U.S. Steel began to produce benzene at
19 the Gary Works?

20 A. I -- I don't know.

21 Q. Does U.S. Steel continue to
22 operate the Gary Works plant?

23 A. The benzene plant?

24 Q. Gary Works in general. Then

25 I'll ask you about benzene.

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02 A. Gary Works is still operating,
03 yes.

04 Q. Is benzene still produced at
05 Gary Works?

06 A. I don't know.

07 Q. Okay.

08 A. I don't think so. I think they
09 just take it down to the light oil. That's
10 what I recall. I don't think they produce
11 benzene at Gary anymore.

12 Q. All right. Are you able to
13 recall when they stopped producing benzene at
14 Gary?

15 A. No.

16 Q. And Geneva Works was the third
17 location you gave me. Does U.S. Steel
18 continue to operate the Geneva Works plant?

19 A. To this day?

20 Q. Yes, sir.

21 A. No.

22 Q. Okay. Do you know when that
23 plant shut down?

24 A. Well, I think the plant is
25 still in operation, but U.S. Steel sold it

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02 years ago.

03 Q. I understand. Do you know when
04 U.S. Steel sold the Geneva Works plant?

05 A. It was sold while I was still
06 working. So it was, you know, maybe 20 years
07 ago.

08 MR. CAIRONE: And before you go
09 on, Andrew, I'll represent to you that
10 the BTX unit at Claritin was shut down
11 in '86, benzene, toluene and xylene.
12 And I'll be happy to provide you with
13 the background to support that
14 representation.

15 MR. DuPONT: Okay.

16 BY MR. DuPONT:

17 Q. Has U.S. Steel produced benzene
18 anywhere outside of the United States?

19 A. No, not to my knowledge.

20 Q. Has U.S. Steel sold benzene
21 outside of the United States?

22 A. Not to my knowledge.

23 Q. Has U.S. Steel ever had its own
24 occupational exposure limit or level for
25 benzene?

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02 A. No.

03 Q. Am I correct that U.S. Steel
04 has a medical department?

05 A. Yes.

06 Q. Does it also have a toxicology
07 department?

08 A. No.

09 Q. It has an industrial hygiene
10 department?

11 A. Yes.

12 Q. And it has a safety department?

13 A. Yes.

14 Q. Are you able to tell me when
15 U.S. Steel first had a medical department?

16 A. I would say the early 1900s.

17 Q. How about an industrial hygiene
18 department, when did U.S. Steel first have an
19 industrial hygiene department?

20 A. Well, the first professional
21 industrial hygienist was Ken Morris, and he
22 was hired around 1950, '51.

23 Q. Did U.S. Steel create an
24 industrial hygiene department when they hired
25 Mr. Morris?

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02 A. Yes.

03 Q. How about the safety department
04 in U.S. Steel, when was the safety department
05 first created?

06 A. I don't know.

07 Q. On average, since the 1950s to
08 the present time, how many industrial
09 hygienists has U.S. Steel employed?

10 A. Oh, I'd -- I would have to
11 speculate. It's increased through the years
12 substantially. I -- I wouldn't venture a
13 guess.

14 Q. I have, in your resume here
15 from another case, that you began to work at
16 United States Steel Corporation as an
17 industrial hygiene engineer in 1964, and that
18 you maintained that position until 1968. Is
19 that correct?

20 A. Yes. It could be correct, if
21 you're looking at my resume.

22 Q. Right. And I'll represent to
23 you that I am. And that's marked as Bates
24 Numbers USS Depo 2787 through 2790. If you'd
25 like to see it --

Objection:
Deletion
"from another case"

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02 A. No, that's fine.

03 Q. -- I'll give that to you.

04 Then you went on to become the
05 industrial hygiene engineer from 1964 to
06 1968.

07 A. If that's what's on the resume,
08 yes.

09 Q. From 1978 to 1986, you were a
10 corporate assistant manager for the
11 industrial hygiene at United States Steel
12 Corporation?

13 A. Yes.

14 Q. When you were working as an
15 industrial hygienist from 1962 to 1964 --
16 strike that. I apologize, I'm looking at the
17 wrong dates.

18 When you were working as an
19 industrial hygiene engineer for the United
20 States Steel Corporation from 1964 to 1968,
21 how many people were employed in the
22 industrial hygiene department?

23 A. '64 through '68, there were
24 about half a dozen.

25 Q. I take it there was a director

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02 of the industrial hygiene department at that
03 time.

04 A. Yes.

05 Q. Who was the director at that
06 time?

07 A. Ken Morris.

08 Q. How many people were employed
09 in the medical department during 1964 to
10 1968?

11 A. I don't know.

12 Q. Did you have interaction with
13 the medical department during that period of
14 time?

15 A. Yes.

16 Q. And what types of people would
17 you interact with in the medical -- medical
18 department?

19 A. The -- me personally, or the
20 industrial hygiene department?

21 Q. You personally.

22 A. When I would go to a facility,
23 I would periodically see the plant physician.

24 Q. What would you see the plant
25 physician for?

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02 A. Just since he was, you know,
03 the plant physician and we both were
04 occupational health professionals, and I may
05 stop in to see him. He may have requested
06 that -- the activity that I was visiting the
07 plant for.

08 Q. Was there a plant physician at
09 each one of U.S. Steel's plants?

10 A. The larger facilities, yes.

11 Q. When you say the larger
12 facilities, what do you mean?

13 A. Well, the integrated steel
14 plants, as opposed to smaller facilities,
15 where you didn't have a large population.

16 Q. How many of these larger
17 facilities were there that had a dedicated
18 industrial -- excuse me, occupational as a
19 position?

20 A. From '64 to '68?

21 Q. Yes, sir.

22 A. I -- it could take some time to
23 count them, but I would say approximately a
24 dozen.

25 Q. Who was the director of

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02 medicine for U.S. Steel in '64 to '68?

03 A. Dr. Bundy was a director, but
04 there was a doctor -- Vice President of
05 Health Services, I believe we called it then,
06 that oversaw the medical, safety and
07 industrial hygiene department. That was Dr.
08 O'Connor.

09 Q. Did the medical department at
10 that period in time, '64 to '68, have its own
11 building?

12 A. No.

13 Q. Did U.S. Steel have, at that
14 point in time, at its medical department any
15 kind of laboratory where it could conduct
16 medical experiments or testing?

17 A. No.

18 Q. Sorry. Were you finished?

19 A. No. There -- there were no
20 experiments or anything conducted. No
21 studies or anything like that. They may have
22 had a small laboratory that -- where they
23 would do some type of tests associated with
24 the annual physical examination of a worker
25 or something like that, but nothing

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02 elaborate.

03 Q. Okay. I've seen in records
04 that have been produced to us that U.S. Steel
05 would conduct pre-employment blood
06 examination, complete blood counts, and
07 conduct complete blood counts on its
08 employees throughout their employment. Would
09 that type of test, for example, be done
10 in-house? In other words, a physician for
11 U.S. Steel, or a nurse for U.S. Steel perhaps
12 would take a blood test and then there would
13 be a laboratory at U.S. Steel that processed
14 the actual test?

15 A. The industrial hygiene
16 laboratory would do some urine analysis, but
17 I don't recall that we ever did do blood
18 counts or anything like that. And the
19 medical department didn't do it, so it
20 possibly was done outside.

21 Q. After 1968, when you worked as
22 a senior industrial hygiene engineer from '68
23 to '78, did the industrial hygiene department
24 grow? Were there more employees during that
25 period of time?

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02 A. Yes.

03 Q. How many?

04 A. Possibly five.

05 Q. Are you able to tell me what
06 the size of the medical department at the
07 United States Steel Corporation was from '68
08 to '78?

09 A. No, I couldn't tell you.

10 Q. Sir, when did you first learn
11 that benzene causes cancer?

12 A. I would say that it was
13 probably the late seventies, early eighties.
14 About that time.

15 Q. Prior to the late seventies,
16 had you seen any information that associated
17 benzene exposure with cancer?

18 A. There was literature that would
19 -- there were some studies done that
20 associated it with cancer. Some
21 organizations were looking at it as a
22 suspected carcinogen prior to that.

23 Q. When is the earliest you saw
24 information associating benzene with cancer?

25 A. I can't recall the earliest

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02 date. It could have been in the
03 mid-seventies, the late seventies.

04 Q. When you worked -- I understand
05 you worked for the Commonwealth of
06 Pennsylvania as an industrial hygienist from
07 '62 to '64. Is that correct?

08 A. Yes.

09 Q. At that point in time, did you
10 have a -- were you aware that there was an
11 association between benzene exposure and
12 cancer?

13 A. No.

14 Q. Had you seen any information
15 during your employment with the Commonwealth
16 of Pennsylvania relating to the ability of
17 benzene to cause cancer?

18 A. Not that I recall.

19 Q. When you learned that benzene
20 was a suspected carcinogen, if I understand
21 you correctly, in the mid 1970s, what forms
22 of cancer were associated, that you learned,
23 with benzene at that time?

24 MR. CAIRONE: Andrew, when
25 you're saying you, just to be clear,

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02 are you asking him personally or as
03 the representative of U.S. Steel?

04 MR. DuPONT: I'm asking him
05 personally at this time.

06 MR. CAIRONE: Okay.

07 THE WITNESS: I would say
08 leukemia.

09 BY MR. DuPONT:

10 Q. Are you able to tell me now, as
11 we sit here today, what forms of cancer are
12 caused by exposure to benzene?

13 A. I'm, you know, not a medical
14 person. I just look at it very broadly as --
15 as causing leukemia.

16 Q. Are you aware that benzene
17 causes damage to human chromosomes?

18 A. I'm not -- as I said, I'm not a
19 medical person. I don't get into that. I'm
20 not aware if benzene is associated with
21 chromosomes.

22 Q. In the course of your work with
23 United States Steel Corporation did you come
24 to learn that the United States Federal
25 Government said that there is no safe level

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02 of exposure to benzene?

03 A. No.

04 Q. Never seen any information from
05 the government to that effect?

06 A. No. I know that through the
07 years they have come out with proposals, and
08 the last was one part per million.

09 Q. And what -- what is your
10 understanding of what one part per million
11 represents?

12 A. That represents permissible
13 exposure level of an eight hour work period,
14 time-weighted average.

15 Q. As an industrial hygienist with
16 the United States Steel Corporation, you were
17 aware, were you not, that one could develop
18 leukemia from exposure to benzene at levels
19 less than one part per million as a
20 time-weighted average?

21 A. No.

22 Q. You've never seen any
23 information to that effect?

24 A. Not that I recall.

25 Q. As an industrial hygienist with

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02 U.S. Steel, you are aware that benzene could
03 be absorbed through human skin; is that
04 correct?

05 A. There is some absorption, I
06 understand.

07 Q. When did you first learn, you
08 personally learn as an industrial hygienist,
09 that benzene is absorbed through human skin
10 when benzene, the liquid, comes into contact
11 with the skin?

12 A. I can't recall. I'd have to
13 say that it was in the early years of my
14 industrial hygiene career.

15 Q. While you were working for the
16 Commonwealth of Pennsylvania?

17 A. Probably.

18 Q. Did you also come to learn that
19 vapors in the air, benzene vapors in the air,
20 can actually be absorbed through human skin?

21 A. If there is some absorption I
22 don't -- again, from an industrial hygiene
23 point of view, I don't know it would be
24 consequential.

25 Q. Let me see if I understand

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02 that. You were aware, as an industrial
03 hygienist working for U.S. Steel, that a
04 person can absorb benzene through their skin
05 by virtue of there being benzene vapors in
06 the air.

07 MR. CAIRONE: Objection,
08 leading.

09 BY MR. DuPONT:

10 Q. Is that correct?

11 A. No. No. No, what I said is
12 that there is some -- not benzene absorption
13 through skin. You know, of course if there
14 is a break in the skin you're going to get
15 more absorption. So it's dependent upon a
16 number of factors. So far as vapors in the
17 air, there may be an extremely small amount
18 of absorption. I wouldn't venture to guess,
19 but it's possible. But I don't think it's of
20 significance compared to the hazard
21 associated with inhalation of vapors.

22 Q. Let me ask it -- I just want to
23 see if I can understand you correctly. As an
24 industrial hygienist with U.S. Steel, you are
25 aware that benzene can be absorbed through

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02 the skin when the skin comes into contact
03 with air that has benzene vapors in it; is
04 that correct? Regardless of what quantity of
05 benzene is being absorbed, you are aware that
06 that could happen.

07 A. To my knowledge, we really
08 never considered the benzene vapors being
09 absorbed through the skin. I -- it would to
10 be of any consequence, it would have to be
11 extremely high concentrations. But here
12 again, the major concern would be associated
13 with inhaling the vapors into the lungs and
14 getting into the blood stream that way. More
15 so than the vapors themselves penetrating
16 intact skin.

17 Q. I don't want to talk to you
18 right now about the relative amount of
19 exposure that you get from the various routes
20 of exposure. I just want to know, yes or no,
21 were you aware, as an industrial hygienist
22 with U.S. Steel, that benzene can be absorbed
23 through human skin through contact with air
24 containing benzene vapors?

25 A. Not really, no.

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02 Q. Two of the chemicals that U.S.
03 Steel produced from light oil were toluene
04 and xylene; correct?

05 A. Yes.

06 Q. How much benzene was present in
07 the toluene that U.S. Steel produced in the
08 1970s?

09 A. I have no idea.

10 Q. Were you aware that benzene was
11 in toluene as it was produced by U.S. Steel?

12 A. I'm aware that there is a
13 residual amount of benzene in toluene and
14 xylene, yes.

15 Q. How much benzene is in xylene
16 and toluene?

17 MR. CAIRONE: Let me object.

18 It's not a subject designated for this
19 witness to testify on. It's not a
20 chemical involved in this case. And
21 so it's not relevant. And it's not a
22 subject that we have presented this
23 witness to testify for U.S. Steel.

24 BY MR. DuPONT:

25 Q. How much benzene was in toluene

Obj
402,
403

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02 manufactured by U.S. Steel during the 1970s?

03 A. I have no idea.

04 Q. How much benzene was in xylene
05 manufactured by U.S. Steel in the 1970s?

06 MR. CAIRONE: Same objection.

07 THE WITNESS: No idea.

08 BY MR. DuPONT:

09 Q. During the 1970s did U.S. Steel
10 monitor its employees for exposure to benzene
11 when they were working with or around
12 toluene?

13 A. There could have been some
14 studies done. I can't recall a specific
15 study that was associated with monitoring for
16 benzene from toluene.

17 Q. Is that a -- was it a practice
18 of the industrial hygienist at U.S. Steel in
19 the 1970s to monitor employees handling
20 toluene or working around toluene?

21 MR. CAIRONE: Can we agree,
22 Andrew, so that I don't need to keep
23 repeating my objection, that my same
24 objection will apply to any question
25 you ask related to toluene or xylene?

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02 MR. DuPONT: Yes, you can have
03 that standing objection.

04 MR. CAIRONE: Okay. Fine.

05 THE WITNESS: And the question
06 again.

07 BY MR. DuPONT:

08 Q. Sure. My question is, was it
09 U.S. Steel's practice, or was it the practice
10 of U.S. Steel's industrial hygienists in the
11 company to monitor its employees for chemical
12 exposures when they worked with or around
13 toluene?

14 A. Well, from an industrial
15 hygiene standpoint, toluene had its own
16 permissible exposure level. So when we would
17 do an exposure evaluation regarding toluene,
18 typically the way it would be done is, we
19 would use the permissible exposure level for
20 toluene. But at the same time, we may take a
21 bulk sample of the toluene to see the -- if
22 there were any constituents in it, such as
23 benzene.

24 Q. Do you recall actually doing
25 that, taking bulk samples of toluene for

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02 benzene content?

03 A. Yes.

04 Q. Do you recall monitoring the
05 air, either personal air monitoring or area
06 monitoring, for toluene and people working
07 with toluene that gave benzene as a result of
08 air monitoring?

09 A. Unless they were working
10 specifically with toluene, it -- it was part
11 of the industrial hygiene practice to look
12 for benzene in toluene and xylene. So
13 depending upon the area you were at would
14 determine the type of monitoring that you
15 did. Meaning, was there a need to be
16 specific for toluene, was there a need to be
17 specific for benzene, was there a need to be
18 specific for xylene.

19 Q. Okay. But one of the things
20 U.S. Steel would do for employees working
21 with toluene would be to measure the air
22 around them to see whether or not that
23 reflected the presence of benzene as well;
24 correct?

25 MR. CAIRONE: Objection,

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02 leading.

03 THE WITNESS: No. No. We would
04 do a toluene exposure evaluation. But
05 here again, as part of that evaluation
06 we may take a bulk sample, if we have
07 reason to believe there could be a
08 significant amount of benzene in the
09 toluene as part of the evaluation.

10 BY MR. DuPONT:

11 Q. Are you familiar, or do you
12 know of any U.S. Steel or USS Chemicals
13 facility in Argo, Illinois?

14 A. No.

15 Q. I'll mark the next document as
16 Exhibit 2.

17 - - -

18 (Whereupon the document was
19 marked, for identification purposes,
20 as Masaitis Exhibit Number Two.)

21 - - -

22 BY MR. DuPONT:

23 Q. For the record, this is Bates
24 Number THAN 2209.

25 And, for the record, this is a

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02 document that was produced to us in the
03 course of discovery by TH Agriculture and
04 Nutrition. Are you familiar with this
05 document, this type of document?

06 A. I looked at some of these
07 documents that were in this book last week,
08 but I don't know if this specific one was in
09 there or not.

10 Q. Had you seen documents like
11 this during the course of your employment
12 with U.S. Steel?

13 A. Not in the course of my
14 employment, no.

15 Q. Okay. Towards the top of the
16 document, under the word shipped from --

17 A. Yes.

18 Q. -- there is an indication of
19 Argo, Ill, which I presume is Illinois.

20 A. Right.

21 Q. You're not familiar with any
22 U.S. Steel facility that was in Argo,
23 Illinois?

24 A. No, I -- I never heard of a
25 facility located in Argo, Illinois.

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02 Q. Did U.S. Steel have any plants
03 in Chicago?

04 A. We had an integrated facility
05 in South Chicago, our South Works.

06 Q. When you say an integrated
07 facility, what do you mean by that?

08 A. I mean that they brought in raw
09 material, and from the raw materials they had
10 an integrated steel making process where they
11 manufactured steel products.

12 Q. Were there coke ovens at that
13 South Works in South Chicago?

14 A. Yes, I believe there were.
15 Yes.

16 Q. Was benzene produced there?

17 A. No.

18 Q. Was light oil produced there?

19 A. There was light oil, and all of
20 the by-product coke ovens, to my knowledge.

21 Q. I see a reference to a Chicago
22 plant at 14700 South Harvard Avenue. Is that
23 the address for South Works?

24 A. I can't recall.

25 Q. Sir, do you have any personal

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02 knowledge, or knowledge that you gathered,
03 outside the context of this litigation,
04 concerning Thompson-Hayward Chemical Company?

05 A. No.

06 Q. Have you ever heard of that
07 company before becoming involved with this
08 case?

09 A. No.

10 Q. What have you learned about
11 Thompson-Hayward Chemical Company since
12 becoming involved with this case?

13 A. I learned that we sold benzene
14 to Thompson-Hayward Chemical Company.

15 Q. Anything else?

16 A. I learned that Thompson-Hayward
17 made products for other companies.

18 Q. Anything else?

19 A. I understand that they were a
20 relatively large company.

21 Q. What is the basis for that
22 understanding?

23 A. The number of employees that
24 they had. The number of facilities that they
25 had.

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02 Q. Where did you gather that
03 information?

04 MR. CAIRONE: Well, let me just
05 make sure we don't cross any lines.
06 Part of the preparation of a corporate
07 representative is to prepare them for
08 the deposition. And so some of this
09 information came in the context of
10 what we provided to Mr. Masaitis.
11 You're free to ask him how he arrived
12 at it, as long as it doesn't involve
13 privileged communications.

14 BY MR. DuPONT:

15 Q. Okay. I don't want to know
16 what your lawyers told you. I want to know
17 what sources, document forms or other forms,
18 other than what your lawyers told you. What
19 source of information do you have, or have
20 you reviewed that allowed you to talk to me
21 about Thompson-Hayward Chemical Company?

22 A. Well, going through the
23 purchase orders, that they were purchasing
24 large amounts of benzene. So they had to be
25 a relatively large corporation, company, to

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02 purchase those amounts.

03 Q. Were the purchase orders, the
04 purchase records, the only documents that you
05 reviewed that gave you information regarding
06 the size of the Thompson-Hayward Chemical
07 Company?

08 A. Pretty much, yes.

09 Q. Any other information you have
10 about Thompson-Hayward Chemical Company would
11 have come from your lawyers, or U.S. Steel's
12 lawyers?

13 A. Pardon me?

14 Q. Any other information that you
15 would have regarding Thompson-Hayward
16 Chemical Company has come from U.S. Steel's
17 lawyers, in terms of communications you had
18 with them?

19 A. Yes.

20 Q. Your -- am I correct that your
21 first involvement with this case was -- was
22 when? When you received the materials last
23 week?

24 A. No. Mr. Sykes called me a
25 couple of months ago and asked if I would

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02 give the deposition. I've been trying to get
03 away from giving the depositions. Would much
04 rather be fishing or doing something else.
05 But anyway, that was my first involvement.
06 Because I told him that I didn't want to do
07 this anymore. He called and asked if I would
08 be the corporate representative and we talked
09 and I agreed to it.

10 Q. Okay. Prior to last week, did
11 you receive any documents pertaining to this
12 case?

13 A. No.

14 Q. Ronald Davis' case?

15 A. No.

16 Q. Do you have any knowledge as to
17 whether or not Thompson-Hayward Company --
18 Chemical Company manufactured chemicals?

19 MR. CAIRONE: Object to form.

20 THE WITNESS: I guess it depends
21 upon what you mean by manufacture. I
22 would say that, yes, they probably
23 have, from my understanding. If
24 manufacturing is getting chemicals
25 together, a group of chemicals, to

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02 make a product from that, then I would
03 say yes.

04 BY MR. DuPONT:

05 Q. Let me ask you: Have you seen
06 any documents from U.S. Steel that would
07 indicate what U.S. Steel knew about
08 Thompson-Hayward Chemical Company during the
09 1960s and the 1970s?

10 A. I may have, I can't recall
11 specifically. I know that they were making
12 products for other companies.

13 Q. Well, you know that now. But I
14 want to ask you about what U.S. Steel knew
15 about Thompson-Hayward Chemical Company
16 during the 1960s and the 1970s. Do you have
17 any documents or any information to indicate
18 to you what U.S. Steel knew about
19 Thompson-Hayward Chemical Company, say, prior
20 to 1977?

21 A. I don't have any documents, or
22 I don't have any personal knowledge of what
23 they knew. And I don't know specifically
24 what other representatives of U.S. Steel knew
25 about that company.

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02 Q. Are you able to tell me that
03 representatives of U.S. Steel actually knew
04 anything about Thompson-Hayward Chemical
05 Company during and prior to 1977?

06 A. Well, I -- I would say that the
07 people who were dealing with them knew about
08 the company, yes.

09 Q. They knew that they sold them
10 benzene?

11 A. They knew they sold them
12 benzene. They had some idea as to what they
13 did, I'm sure, and the number of people that
14 they employed, their facilities, where they
15 were located. That sort of thing.

16 Q. Sir, I want to know what you
17 actually know, not what you might be guessing
18 those people knew.

19 A. I don't know what other people
20 knew regarding the company.

21 MR. DuPONT: Let's take a five
22 minute break.

23 VIDEO TECHNICIAN: The time is
24 10:53 a.m., this is the end of tape
25 number one.

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02 - - -

03 (Whereupon there was a recess in
04 the proceeding.)

05 - - -

06 VIDEO TECHNICIAN: The time is
07 11:01, this is the beginning of tape
08 number two. We're now back on the
09 record.

10 BY MR. DuPONT:

11 Q. Mr. Masaitis, during your
12 employment with U.S. Steel as an industrial
13 hygienist, did you ever perform exposure
14 assessments for workers?

15 A. Yes.

16 Q. Did those exposure assessments
17 include the chemical, benzene?

18 A. Yes.

19 Q. How would you go about
20 performing an exposure assessment as an
21 industrial hygienist for U.S. Steel?

22 A. Well, there were -- there were
23 different techniques you could utilize.

24 There was instrumentation available that
25 would give you a number that was comparable

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02 to the percentage of vapors in the air, but
03 was not specific to any vapor. There were
04 what we called the colormetric detector tubes
05 for different compounds. There was one for
06 benzene, toluene, xylene. You could use
07 that. Again, if you didn't want to be that
08 specific, or if you didn't need to be that
09 specific, then there were methods whereby you
10 could take a grab sample of the air and have
11 that analyzed by a laboratory instrument to
12 be more specific. Or you could take charcoal
13 tube samples that would absorb the vapors in
14 the air, and later analyzed by a laboratory
15 instrument, which was very specific.

16 Q. All right. Were there --
17 strike that.

18 Let me ask you. When you
19 tested specifically for benzene, how did you
20 do that?

21 A. Well, pretty much used every
22 method I just mentioned.

23 Q. Did you also use urinary penal
24 analysis for benzene?

25 A. Well, I didn't. But there were

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02 samples of the urine of the workers exposed
03 to benzene that were taken.

04 Q. Was that done by industrial
05 hygienists at U.S. Steel?

06 A. No, that was the medical.

07 Q. Okay. And did U.S. Steel also
08 test blood of its workers to determine
09 whether or not they were being exposed to
10 benzene?

11 A. Yes.

12 Q. When did U.S. Steel begin to
13 use urinary penal analysis as one method of
14 determining how much exposure, and whether
15 the workers were having exposure to benzene?

16 A. I can't say. I don't know.

17 Q. Was that a practice used by
18 U.S. Steel before you began with the company?

19 A. I would say, yes.

20 Q. When did U.S. Steel begin to
21 use testing the blood of its workers to
22 determine whether or not they were being
23 exposed to benzene?

24 A. I can't say the exact date. It
25 was prior to me starting.

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Saturday, August 15, 2020

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02 Q. Was that something the company
03 did as far back as the 1920s?

04 A. I have no idea.

05 Q. Do you know if they did that in
06 the 1930s?

07 A. I -- I don't know.

08 Q. Did you ever perform exposure
09 assessments when you did not have actual air
10 monitoring data available?

11 A. Actually, exposure monitoring
12 is a determination of the amount of the
13 material in the workers' breathing zone that
14 you're interested in. So one would go hand
15 in hand. If you do an exposure assessment,
16 you do take samples.

17 Q. Okay. Well, I want to make
18 sure we're talking about the same thing.
19 Exposure monitoring would be either measuring
20 of the air or the blood or urine for some
21 indication that there is benzene present in
22 the air, or benzene that's been absorbed into
23 the human body; correct?

24 A. Yes.

25 Q. That -- would you call that --

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02 as an industrial hygiene technique, would you
03 call that a quantitative exposure assessment?

04 A. I would -- if you do any type
05 of air monitoring, it's quantitative. Now,
06 how refined the quantitative analysis is is
07 something different. In other words, you
08 could take a sample for the total amount of
09 vapors that are combustible in the area, an
10 environment, or you could take a sample to
11 find out what specific vapors were present in
12 that environment.

13 Q. Now, can an industrial
14 hygienist perform an exposure assessment,
15 sometimes referred to as a qualitative
16 exposure assessment? Have you ever heard
17 that term before, qualitative exposure
18 assessment?

19 A. I know that there are some
20 people who will go out into an environment
21 and do a look-see and make a guesstimate, but
22 we did not do that. Any analysis of exposure
23 assessment that we did was based upon air
24 monitoring.

25 Q. If you didn't have air

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02 monitoring available, and there was some sort
03 of incident at U.S. Steel, somebody
04 complained that they became sick from
05 exposure and you didn't have air monitoring
06 available for that individual, or that area
07 of a particular plant, what would you do to
08 go back retrospectively and try to figure out
09 what happened?

10 MR. CAIRONE: Object to the
11 form.

12 THE WITNESS: We would -- in
13 either situation, we would be in there
14 doing air monitoring for the vapors or
15 whatever form of the contaminant
16 existed specifically for what was in
17 the environment.

18 BY MR. DuPONT:

19 Q. Were there ever situations
20 where someone at U.S. Steel became sick or
21 had some sort of reaction to exposure -- from
22 exposure to a chemical and brought that to
23 the attention of the medical department or
24 industrial hygiene department, and you were
25 called upon to determine what it was that

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02 happened to that individual?

03 A. There could have been. As I
04 sit here today, I can't recall any specific
05 incident.

06 Q. If you were called upon to
07 investigate that type of incident as an
08 industrial hygienist for U.S. Steel, and you
09 didn't have specific air monitoring data for
10 that person who was injured, or that area of
11 the plant where that person was injured, what
12 would you do in order to figure out what
13 happened to that individual?

14 A. We would go into the area and
15 get it. We would go into the area and do an
16 evaluation by taking samples that were
17 specific to the materials in the environment
18 that he was working in.

19 Q. Are you able to tell me what
20 specifically -- strike that.

21 Do you have any knowledge of
22 what information, if anything, U.S. Steel
23 provided to Thompson-Hayward Chemical Company
24 regarding benzene prior to 1977, or during
25 that year?

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02 A. I know that there were material
03 safety -- there was a Material Safety Data
04 Sheet that I saw. I believe it was dated
05 '72.

06 Q. Okay. And is that information
07 that you received in the context of this
08 litigation?

09 A. Yes.

10 Q. As part of the book -- the
11 binder that you were looking at earlier
12 today; correct?

13 A. Correct.

14 Q. Independent from the material
15 that you received in the context of this
16 case, do you have any knowledge of what
17 documents or information U.S. Steel provided
18 to Thompson-Hayward Chemical Company, if any,
19 during or prior to 1977?

20 A. I personally have no knowledge.

21 Q. Besides seeing the Material
22 Safety Data Sheet in the documents that you
23 brought with you today, the documents that
24 you reviewed for your deposition and provided
25 to you by U.S. Steel, do you have any other

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02 documents that indicate what information, if
03 any, was provided to Thompson-Hayward
04 Chemical Company, during or prior to 1977,
05 concerning benzene?

06 A. No.

07 - - -

08 (Whereupon the document was
09 marked, for identification purposes,
10 as Masaitis Exhibit Number 3.)

11 - - -

12 BY MR. DuPONT:

13 Q. I'm going to hand you what I've
14 marked as Masaitis 3, and it was previously
15 marked as Carter 3. And ask you, is that the
16 Material Safety Data Sheet that you were
17 referring to?

18 A. (Reviewing document.)

19 Yes.

20 Q. Sir, can you confirm for me
21 that this Material Safety Data Sheet does not
22 contain any warning concerning benzene
23 actually potentially causing cancer?

24 A. There are no warning signs on
25 this Material Safety Data Sheet of benzene

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02 causing cancer.

03 Q. There are also no warnings on
04 this Material Safety Data Sheet that benzene
05 can cause damage to the human bone marrow and
06 blood, are there?

07 A. There are references on the
08 Material Safety Data Sheet to the MCA Safety
09 Data Sheet regarding different health hazards
10 and other aspects of information that are put
11 on Material Safety Data Sheets.

12 Q. Sir, my question is, yes or no,
13 does this Material Safety Data Sheet that you
14 have in front of you, that's been marked as
15 Exhibit 3, inform the reader, based on the
16 information that's in this Material Safety
17 Data Sheet, that benzene can cause damage to
18 the blood and bone marrow in human beings?

19 MR. CAIRONE: I'm going to
20 object. I think he tried to answer
21 that question. You can answer it
22 again.

23 THE WITNESS: The Material
24 Safety Data Sheet doesn't have any
25 language specifically addressing

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02 cancer. However, there are references
03 to another Material Safety Data Sheet
04 published by the Manufacturers
05 Chemical Association that talks about
06 health hazards and other information
07 that's put on Material Safety Data
08 Sheets.

09 MR. DuPONT: Objection, I'm
10 going to move to strike your response
11 because it did not answer my question.

12 BY MR. DuPONT:

13 Q. My question, which can be
14 answered by a yes or no, am I correct, that
15 this Material Safety Data Sheet that you have
16 in front of you as Exhibit 3 does not contain
17 any warning or any information that benzene
18 can cause damage to human bone marrow in a
19 human being?

20 MR. CAIRONE: Objection, asked
21 and answered. Are you asking him
22 excluding the reference that he's
23 answered twice?

24 MR. DuPONT: I'm asking him
25 whether those warnings appear anywhere

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02 on this Material Safety Data Sheet
03 itself.

04 THE WITNESS: I have -- I'll
05 answer the question the same way as I
06 did before, because there is no
07 reference to it, but it -- cancer, the
08 word cancer doesn't appear. However,
09 there are references to health hazards
10 on the Material Safety Data Sheet and
11 other information that is specifically
12 put on Material Safety Data Sheets.

13 BY MR. DuPONT:

14 Q. Sir, do you see the words blood
15 or bone marrow on this Material Safety Data
16 Sheet?

17 A. No, I don't see it on this
18 Material Safety Data Sheet. But that's not
19 to say that it's not on the material
20 referenced in this Material Safety Data
21 Sheet.

22 MR. DuPONT: I move to strike
23 anything after, I don't see it on this
24 Material Safety Data Sheet.

25 BY MR. DuPONT:

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02 Q. If the only thing an individual
03 has in front of them, a worker has in front
04 of them, is this Material Safety Data Sheet
05 I've marked as Exhibit 3, do they receive any
06 warning that benzene exposure can cause
07 damage to human blood or bone marrow?

08 A. They would -- if they were
09 interested, they would reference what is
10 referenced on the --

11 MR. DuPONT: Objection.

12 MR. CAIRONE: Mr. Masaitis,
13 just answer his question. Can you
14 repeat it, Andrew?

15 MR. DuPONT: Sure.

16 BY MR. DuPONT:

17 Q. Sir, my question is, if the
18 only information an individual or a worker or
19 a company had in front of them was this
20 Material Safety Data Sheet that's marked as
21 Exhibit 3, would they receive any warning
22 that benzene can cause damage to human blood
23 or bone marrow?

24 A. Looking at the Material Safety
25 Data Sheet, the words are not spelled out.

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02 But they are spelled out in the material
03 that's referenced in the Material Safety Data
04 Sheet.

05 Q. Sir, I'm not asking you at this
06 point in time about any material referenced
07 in the Material Safety Data Sheet. Okay? My
08 question to you -- I move to strike your last
09 response. I need you to tell me, as a
10 representative of U.S. Steel here today, that
11 if the only information an individual had in
12 front of them concerning U.S. Steel's benzene
13 was this Material Safety Data Sheet, would
14 that individual receive a warning that
15 benzene exposure can cause damage to the
16 blood and bone marrow in a human body?

17 A. If they were just looking at
18 this Material Safety Data Sheet and they
19 didn't go to the references on the Material
20 Safety Data Sheet, they would not.

21 Q. And am I also correct that if
22 the only information an individual had in
23 front of them was this Material Safety Data
24 Sheet, they would not be warned that it's
25 necessary to use respiratory protection when

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02 working with benzene from U.S. Steel?

03 MR. CAIRONE: Object to the

04 form because your characterization of

05 information excludes the reference.

06 But -- so if you're asking whether if

07 they only look at this piece of paper,

08 then I think that's a legitimate

09 question.

10 MR. DuPONT: I think the

11 legitimate objection is objection to

12 form and the rest is --

13 MR. CAIRONE: Well, if I don't

14 tell you what's wrong with the form --

15 MR. DuPONT: No, you say form

16 and then it's up to me to correct it.

17 MR. CAIRONE: All right.

18 MR. DuPONT: Anything other than

19 that is an improper objection.

20 MR. CAIRONE: I disagree, but

21 we'll do it that way.

22 THE WITNESS: Your question was?

23 BY MR. DuPONT:

24 Q. Yes, sir. My question was, if

25 the only information an individual had in

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02 front of them regarding U.S. Steel's benzene
03 was this Material Safety Data Sheet, would
04 that individual be warned that he needed to
05 wear respiratory protection or ask for a
06 respirator when working with benzene?

07 MR. CAIRONE: Objection, form.

08 THE WITNESS: Well, you really
09 don't have to wear respiratory
10 protection when you're working with
11 benzene. It depends upon the benzene
12 concentration that the individual is
13 subjected to to determine the amount
14 or the type of respiratory protection
15 that would be needed.

16 BY MR. DuPONT:

17 Q. Sir, the purpose of this
18 exercise is for me to ask you a question and
19 you to answer the question that I'm asking.

20 A. Yes.

21 Q. And I don't mean to sound
22 contrite, and I apologize if I do, but you're
23 not answering my questions. Okay. I'm going
24 to move to strike your last response.

25 My question to you, sir -- and

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02 the answer is yes or no.

03 If the only individual (sic)
04 that a person had in front of them was this
05 Material Safety Data Sheet, would that
06 individual be warned that they need to wear a
07 respirator, a mask or other respiratory
08 protection when working with U.S. Steel's
09 benzene?

10 MR. CAIRONE: Object to form.

11 THE WITNESS: My answer is the
12 same. The industrial hygiene answer
13 is that you do not have to wear a
14 respirator when you're working with
15 benzene. It's not necessary. What
16 determines when you have to wear
17 respiratory protection is the exposure
18 to the vapors from the benzene that
19 you're working with.

20 BY MR. DuPONT:

21 Q. Sir, I'm not asking you what
22 you opinion is, I'm asking you what this
23 Material Safety Data Sheet says and what it
24 does not say.

25 A. That's -- that's my answer.

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02 I'm -- I can't change that answer as a
03 professional industrial hygienist. I can't
04 sit here and say that everybody that works
05 with benzene at all times has to wear a
06 respirator.

07 MR. CAIRONE: Mr. Masaitis, let
08 me see if we can get on track because
09 I think that that is a different
10 issue. If you listen to Mr. DuPont's
11 question carefully, and I think he
12 phrased it the last time as saying,
13 does it say it on this piece of paper
14 or not. Am I right, Andrew.

15 MR. DuPONT: I'll repeat my
16 question.

17 BY MR. DuPONT:

18 Q. If the only information that an
19 individual received regarding U.S. Steel's
20 benzene is this Material Safety Data Sheet,
21 would that person be warned that they need to
22 wear respiratory protection when working with
23 benzene?

24 MR. CAIRONE: Object to form.

25 THE WITNESS: I can't agree that

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02 a Material Safety Data Sheet has to
03 say that a person working with benzene
04 needs to wear a respirator because
05 they don't, unless their
06 concentrations of exposure to the
07 benzene are excessive.

08 BY MR. DuPONT:

09 Q. Sir, I'm not asking you to
10 agree with me. I'm just asking you to tell
11 me whether or not this Material Safety Data
12 Sheet provides the user with a warning that
13 they need to wear material -- respiratory
14 protection when working with benzene.

15 A. When working with benzene that
16 exceeds a permissible exposure level.

17 Q. Sir, I'm not placing that
18 qualification on the question. Okay. If you
19 have an answer that you want to give that's
20 being an advocate for the company, I'm not
21 interested in that today. I just want to
22 know the answer to my question.

23 MR. CAIRONE: Okay. I think you
24 need to stop arguing with the witness.

25 I think there is a legitimate

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02 misunderstanding here. And I think
03 that the way you framed your question
04 has led the witness to a point that
05 he's having difficulty answering.
06 Maybe if we went off the record we
07 could straighten it out. If you don't
08 want to, we can continue to go in
09 circles. But it's your deposition.

10 BY MR. DuPONT:

11 Q. If I had this Material Safety
12 Data Sheet in front of me for U.S. Steel
13 benzene and nothing else, would I be warned
14 that I need to wear respiratory protection
15 under any circumstances?

16 MR. CAIRONE: The document
17 speaks for itself. You can answer.

18 THE WITNESS: Under -- you
19 wouldn't be warned of the need to wear
20 respiratory protection if your
21 exposures were excessive.

22 BY MR. DuPONT:

23 Q. All right. Would I be warned
24 that I would need to wear material -- strike
25 that.

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02 If this Material Safety Data
03 Sheet was the only information I had in front
04 of me, would I be warned that I need to wear
05 a respirator under any circumstances when
06 working with U.S. Steel's benzene?

07 A. You would be warned if there
08 was some necessity to wear a respirator.

09 Q. Okay. Show me on this Material
10 Safety Data Sheet where it says wear a
11 respirator under these circumstances?

12 A. There is -- there is no section
13 on this Material Safety Data Sheet that says
14 that. There are references to the MCA
15 Material Safety Data Sheet that talks about
16 respiratory protection.

17 Q. All right. We're talking for
18 the moment about this Material Safety Data
19 Sheet that we have in front of us. Is your
20 answer that there is no information on this
21 Material Safety Data Sheet that advises the
22 user under which circumstance they should
23 wear respiratory protection when working with
24 benzene?

25 A. Without referring to the -- the

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02 manufactured chemicals Material Safety Data
03 Sheet, no.
04 Q. Okay. In fact, if you look
05 under Section Eight of the Material Safety
06 Data Sheet, on the second page of the
07 document, there is a category that says,
08 respiratory protection, specified type, and
09 no information is provided in that category.
10 Is that correct?
11 A. That's correct.
12 Q. Sir, if I could turn your
13 attention back to Exhibit 3. I believe you
14 told me, and correct me if I'm wrong, that
15 this Material Safety Data Sheet was dated
16 1972. Did I hear you correctly?
17 A. I did mention 1972. I think
18 that -- looking at the information in the
19 upper lefthand corner, it talks about the
20 approval expires April 30, 1971. So we're
21 saying it was after '71, so I'm saying '72.
22 Q. So why are you saying 1972?
23 A. I may have seen some
24 correspondence that went out with this. I
25 can't recall specifically, but I think that

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02 it was thereabouts that it went out.

03 Q. Can you point to any
04 correspondence that you had that went out
05 with this Material Safety Data Sheet to
06 Thompson-Hayward Chemical Company?

07 And I'm asking because I don't
08 recall seeing that. If you have it, I'd like
09 to see it.

10 A. Yes. January, 1972.

11 Q. Is that correspondence to
12 Thompson-Hayward Chemical Company, or is this
13 a general document that U.S. Steel produces
14 in every benzene case?

15 A. It's not a document that's
16 produced in every benzene case. What it is
17 is a Material Safety Data Sheet that was sent
18 to our customers along with a cover letter,
19 dated January 1972.

20 Q. Okay. My question to you, is
21 that January 1972 cover letter a form cover
22 letter that U.S. Steel has in its records, or
23 is that a cover letter that U.S. Steel knows
24 actually went to Thompson-Hayward Chemical
25 Company? Is there any indication in the

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02 records that that cover letter went to
03 Thompson-Hayward Chemical Company?

04 A. No, but there's indication on
05 the Material Safety Data Sheet that the
06 Material Safety Data Sheet went to
07 Thompson-Hayward Chemical Company. And I
08 believe that in the search that the Material
09 Safety Data Sheet was found with this letter.

10 Q. Okay. I don't believe it was.
11 So what I'm trying to learn is, does U.S.
12 Steel -- and maybe your counsel can clarify
13 this, but does U.S. Steel have any cover
14 letter that accompanied the actual Material
15 Safety Data Sheet that was marked as
16 Exhibit 3?

17 MR. CAIRONE: Can we go off the
18 record a second.

19 VIDEO TECHNICIAN: The time is
20 11:28, we're now off the record.

21 - - -

22 (Discussion held off the
23 record.)

24 - - -

25 VIDEO TECHNICIAN: The time is

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02 11:29, we're now back on the record.

03 BY MR. DuPONT:

04 Q. Let me see if I can clarify
05 this based on what your counsel has just told
06 me.

07 U.S. Steel does not have a
08 cover letter that accompanied Exhibit 3
09 specifically going to Thompson-Hayward
10 Chemical Company.

11 A. We don't --

12 Q. Is that correct?

13 A. We don't have a form letter
14 with Thompson Hayward's name on the letter,
15 that's correct.

16 Q. And this Material Safety Data
17 Sheet, if I understand you correctly, that
18 we've marked as Exhibit 3, which is Bates
19 Number HD 649 to 650, is the same form of the
20 Material Safety Data Sheet that's attached to
21 the cover letter dated January, 1972 that you
22 directed me to.

23 A. Yes.

24 Q. Correct?

25 A. Yes.

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02 Q. That January 1972 letter is
03 Bates Number USS 02617A; correct?

04 A. Yes.

05 Q. Let's go ahead, if we can. Can
06 you take out that cover letter and allow me
07 to mark that -- well, I can't do that,
08 because I've already marked the next one in
09 sequence, and it actually goes along with
10 that. So I'll just hand that to you.

11 - - -

12 (Whereupon the document was
13 marked, for identification purposes,
14 as Masaitis Exhibit Number 4.)

15 - - -

16 BY MR. DuPONT:

17 Q. The first page of Exhibit 4,
18 is a form cover letter dated January, 1972.

19 A. Is there a question pending?

20 Q. Yes, is that the same document
21 that you pointed out to me in your binder of
22 information?

23 A. Yes.

24 Q. What that document is, if I
25 understand it, is a form cover letter dated

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02 January, 1972 that you indicated would
03 accompany U.S. -- USS Chemicals' benzene
04 Material Safety Data Sheets; right?

05 A. Yes.

06 Q. All right. So at some point in
07 time, after 1971, the Material Safety Data
08 Sheet that's marked as Exhibit 3 would have
09 been sent, but we can't say at what point in
10 time after 1971. Is that correct?

11 A. Yes.

12 Q. Looking at the cover letter
13 that is marked as Exhibit 4, USS 2617A, does
14 that cover letter contain any warnings
15 information concerning benzene?

16 A. No.

17 Q. Other than Material Safety Data
18 Sheets for benzene during the 1970s, let's
19 say from 1970 to 1977, what types of
20 documents did U.S. Steel use, if any, to
21 convey warnings information concerning
22 benzene?

23 A. For purposes of?

24 Q. To convey warnings information
25 to U.S. Steel's customers that were buying

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02 benzene from it?

03 A. I'm not aware of any other form
04 of this. There may have been other
05 information, but I'm not aware of it.

06 - - -

07 (Whereupon the document was
08 marked, for identification purposes,
09 as Masaitis Exhibit Number 5.)

10 - - -

11 BY MR. DuPONT:

12 Q. I'm going to hand you what's
13 been marked as Exhibit 5. And that, for the
14 record, is Bates Number USS 5889 to 5891.
15 Can you identify for the record what this
16 document is?

17 A. It's a cover letter dated
18 September 1979, conveying a Material Safety
19 Data Sheet for benzene.

20 Q. And is the Material Safety Data
21 Sheet for benzene also attached to it?

22 A. Yes.

23 Q. Does this Material Safety Data
24 Sheet we've marked as Exhibit 5 convey any
25 warning that benzene can cause cancer?

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02 A. No.

03 Q. Does this Material Safety Data
04 Sheet that we've marked as Exhibit 5 convey
05 any warning that benzene can cause damage to
06 the human blood and bone marrow?

07 A. No.

08 Q. Now, this Material Safety Data
09 Sheet does contain information regarding
10 respiratory protection; correct?

11 A. Yes, it does.

12 Q. And that's under section nine,
13 special precautions?

14 A. Yes.

15 Q. Why did U.S. Steel decide to
16 put respiratory information on the Material
17 Safety Data Sheet itself beginning in 1979?

18 A. I didn't prepare the Material
19 Safety Data Sheets. I do not know why it's
20 on this Material Safety Data Sheet. I mean,
21 it's something that should be on the Material
22 Safety Data Sheet.

23 Q. This 1979 Material Safety Data
24 Sheet was prepared after OSHA implemented the
25 emergency temporary standard for benzene. Is

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02 that correct?

03 A. I believe so.

04 Q. What's your understanding of
05 what the emergency temporary standard for
06 benzene was?

07 A. In what regard?

08 Q. Why -- are you familiar --
09 you're familiar with the emergency temporary
10 standard for benzene; correct?

11 A. I'm aware of that there was an
12 emergency temporary standard came out, yes.

13 Q. That came out in 1977?

14 A. I believe it was '77.

15 Q. And at that point in time, OSHA
16 reduced the permissible exposure levels for
17 benzene from 10 parts per million on an eight
18 hour time-weighted average to one part per
19 million. Am I correct?

20 A. Yes.

21 Q. And that was a result of OSHA
22 receiving information confirming, through
23 epidemiological studies, that benzene causes
24 leukemia?

25 A. They had accumulated some

Objection:
402 403,
Relevance;
After 1978

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02 studies that talked about leukemia.

03 Q. Do you know why U.S. Steel did
04 not warn, in its Material Safety Data Sheet
05 dated 1979, that benzene causes cancer?

06 A. I don't know that when this
07 Material Safety Data Sheet was prepared, that
08 it was widely accepted by the occupational
09 health community that indeed these studies
10 that OSHA was referencing were correct. At
11 least I don't know if the scientific and the
12 medical community was subscribing to what was
13 being said regarding the carcinogenicity of
14 benzene at that time.

15 Q. OSHA was the federal agency
16 that regulated workplace safety and health;
17 correct?

18 A. Yes.

19 Q. And as of 1977, the federal
20 government, the agency responsible for
21 protecting workers, said benzene causes
22 cancer definitively.

23 MR. CAIRONE: Is that a
24 question?

25 BY MR. DuPONT:

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02 Q. Can you tell me why it is U.S.
03 Steel did not follow the direction of the
04 United States Government to provide a warning
05 concerning benzene causing cancer on this
06 Material Safety Data Sheet?

07 MR. CAIRONE: Object to the
08 form. You asked him before why, and
09 he answered it, so it's also asked and
10 answered.

11 THE WITNESS: I would say that
12 at that time, the majority of the
13 occupational health community's
14 scientific and medical people were not
15 convinced that indeed there was
16 sufficient evidence to warrant it as a
17 carcinogen.

18 BY MR. DuPONT:

19 Q. What was your involvement
20 during the late 1970s of studying the
21 literature of benzene's health effects on
22 human beings?

23 A. My personal --

24 Q. Yes.

25 A. -- knowledge?

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02 Q. I wasn't reviewing studies, but
03 I certainly was in contact with other
04 occupational health professionals. And at
05 that time there was a discussion, that I
06 recall, regarding that. Specific people,
07 specific discussion, I can't state.

08 - - -

09 (Whereupon the document was
10 marked, for identification purposes,
11 as Masaitis Exhibit Number 6.)

12 - - -

13 BY MR. DuPONT:

14 Q. The next document is marked as
15 Exhibit Six. The next Bates Number, USS
16 2519. Can you identify for us what this
17 document is?

18 A. It's a document regarding the
19 bulk shipment of benzene.

20 Q. When you say the bulk shipment
21 of benzene, what do you mean?

22 A. It talks about shipping papers,
23 placarding, tagging requirements and shipping
24 container required.

25 Q. Is this a document that would

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02 actually accompany shipments of benzene, or
03 is this a document that sets forth U.S.
04 Steel's practices regarding what types of
05 documentation would accompany shipments of
06 benzene? I'm just trying to learn more about
07 what it is.

08 A. Other than going through it
09 and, you know, trying to come up with an
10 answer to that question, I can't say
11 specifically how it was used at this time.

12 Q. This document is dated
13 April 29, 1974; is that correct?

14 A. Yes.

15 Q. It says, non-ferrous traffic.
16 What does that mean to you?

17 A. Non-ferrous, meaning not iron
18 related.

19 Q. Do you have any knowledge,
20 based on your understanding of the company's
21 procedures, or your work at U.S. Steel, as to
22 whether or not this specific document, or
23 this type of document would actually
24 accompany shipments?

25 A. I -- I can't say specifically

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02 that it accompanied a shipment, other than
03 going through the document and it talks about
04 the following description shall appear in the
05 bill of lading and any other shipping papers
06 accompanying shipments. It talks about the
07 shipping papers, the placarding of the -- the
08 vessel that was used to transport the
09 material and tagging requirements and the
10 requirements of the container itself.

11 Q. Okay. All right. So let's go
12 through that. Roman Numeral one, shipping
13 paper at the top of the document. Do you see
14 that?

15 A. Yes.

16 Q. Is says, "The following
17 description shall appear on the bill of
18 lading." Correct?

19 A. Yes.

20 Q. A bill of lading is a piece of
21 paper that accompanies the shipment of a
22 material to say what the material is, what
23 the cost of the material is and what the
24 quantity of the material being shipped is.
25 Generally, that's what it is?

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02 A. Yes.

03 Q. So what this document we're
04 looking at as Number Exhibit 6 is, it tells
05 us that the language past the colon that's in
06 that sentence is what would appear on the
07 actual bill of lading? The language that
08 starts with, in parentheses, benzol,
09 flammable liquid, note, in the event of an
10 emergency concerning the chemicals in the
11 shipment call toll free 800-424-9300 day or
12 night, that's the language that would appear
13 in the bill of lading.

14 A. Yes.

15 Q. Then it says, "Note, in
16 addition to the above, the following
17 clarification must be displayed." And then
18 there is language in quotations.

19 A. Yes.

20 Q. So that language in quotations
21 would also be conveyed on the bill of lading
22 for benzene, for example?

23 A. I would say yes.

24 Q. The next section discusses the
25 placarding requirements for Roman Numeral

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02 Number II?

03 A. Yes.

04 Q. Talking about -- when they say
05 placarding requirements, what do they mean by
06 a placard?

07 A. Putting a placard, a tag, or,
08 you know, something on the vessel identifying
09 it.

10 Q. Okay. That vessel could be a
11 rail car, it could be a tanker truck, it
12 could be a barge?

13 A. Yes.

14 Q. The third section addresses
15 tagging requirements. Where are the tags
16 placed that are referred to here?

17 A. Where are they placed?

18 Q. Correct.

19 A. There is a holder on the vessel
20 itself to put the tag on.

21 Q. And the next section discusses
22 shipping container required. My question,
23 sir, is, looking at this document, does this
24 tell you that any warning is placed on any of
25 the shipping papers or placards or tags or

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01 JOHN MASAITIS

02 shipping containers of benzene regarding any
03 cancer hazard associated with benzene
04 exposure?

05 A. The -- this describes how to
06 comply with the, I guess, it would be the
07 Interstate Commerce Commission Shipping
08 Requirements, and I think the language is
09 very specific as to what they had to put on
10 the devices that were conveying the
11 information. There is nothing on here that
12 says cancer hazard. But it is compliant, as
13 I understand, with the ICC regulations on
14 what should be placarded and put in the
15 container and the tags.

16 Q. Okay. To your knowledge, as of
17 1974 and before then, any of those
18 regulations of this document pertains to,
19 require the shipper or otherwise -- strike
20 that.

21 Do you have any knowledge as to
22 whether any of the shipping papers, placards,
23 tags or shipping containers used to transport
24 benzene by U.S. Steel, as of 1974 or before,
25 contained any cancer warning?

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02 A. Not to my knowledge.

03 Q. Do you know whether any of
04 those materials contain any warning regarding
05 the use of respiratory protection?

06 A. Not to my knowledge, no.

07 Q. Do you know whether any of
08 those materials contained any warnings
09 regarding benzene being able to cause damage
10 to the blood and bone marrow of humans?

11 A. I don't -- not to my knowledge,
12 no.

13 Q. Do you know whether any of
14 those warnings appeared on shipping papers,
15 placards, tags or shipping containers through
16 1978?

17 A. Not 1974. I don't think so,
18 no.

19 Q. I'm sorry, I'll keep my voice
20 up. And I wanted to ask you until the time
21 point of 1978 because we have been discussing
22 including and prior to 1974.

23 At any point in time up through
24 and including 1978, were there any benzene
25 warnings -- strike that.

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02 At any point in time up until
03 and including 1978, did any cancer warnings
04 appear on shipping papers, placards, tags or
05 shipping containers used by U.S. Steel to
06 ship benzene?

07 A. Not to my knowledge.

08 Q. Same question regarding
09 warnings that benzene can cause damage to the
10 blood and bone marrow of humans.

11 A. Not on the shipping labels, no.

12 Q. Same question as to the need
13 for using respiratory protection of benzene.

14 A. Not to my knowledge.

15 MR. DuPONT: Mark the next
16 document as Exhibit 7.

17 - - -

18 (Whereupon the document was
19 marked, for identification purposes,
20 as Masaitis Exhibit Number 7.)

21 - - -

22 BY MR. DuPONT:

23 Q. And I'd just like to confirm
24 with you that this is an updated version of
25 the product shipping data sheet that we were

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02 looking at that was marked as Exhibit 6, this
03 one being dated April 1 of 1976.

04 A. It appears to be as you've
05 described.

06 Q. This, for the record, is Bates
07 Number USS 2520 to 2521.

08 I'm going to go out of order
09 here, so I apologize. The next document is
10 Exhibit Number 9.

11 - - -

12 (Whereupon the document was
13 marked, for identification purposes,
14 as Exhibit Number 9.)

15 - - -

16 BY MR. DuPONT:

17 Q. Is that the April 1, 1978
18 version of the product shipping data sheet
19 that we discussed at Exhibit Number 6 and
20 Exhibit Number 7?

21 A. It appears to be.

22 Q. I'll hand you the exhibit I
23 skipped, which is Exhibit Number 8. That's
24 USS 1246.

25 - - -

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02 (Whereupon the document was
03 marked, for identification purposes,
04 as Masaitis Exhibit Number 8.)

05 - - -

06 BY MR. DuPONT:

07 Q. Sir, can you tell me what kind
08 of document this is?

09 A. It's a document regarding
10 benzene.

11 Q. Do you know how this document
12 was used? Strike that.

13 Had you seen a document like
14 this in your employment with U.S. Steel?

15 A. Not that I recall.

16 Q. Do you have any knowledge as to
17 how this document was used?

18 A. No.

19 Q. Do you know whether this
20 depicts any language that was used on the
21 labels or shipping materials or anything of
22 that nature?

23 A. Other than the fact that it
24 says, keep container closed. I don't know
25 how it was used.

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02 Q. Okay. And we can agree that
03 looking at this document, however it was
04 used, conveys no cancer warning associated
05 with benzene?

06 A. There is no cancer warning on
07 this document.

08 Q. It also doesn't warn the reader
09 that benzene can cause damage to the blood
10 and bone marrow.

11 A. It does not.

12 Q. It also does not warn the
13 reader that the reader must wear a respirator
14 or mask or other respiratory protection when
15 working with benzene or around benzene under
16 any circumstances?

17 A. It doesn't discuss respiratory
18 protection usage.

19 Q. The next exhibit I'll mark is
20 Exhibit 10.

21 - - -

22 (Whereupon the document was
23 marked, for identification purposes,
24 as Masaitis Exhibit Number 10.)

25 BY MR. DuPONT:

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01 JOHN MASAITIS

02 Q. And that's Bates Number 296 to
03 297.

04 Can you tell us what this
05 document depicts?

06 A. Looks like copies of tags
07 regarding benzene.

08 Q. How would these tags be used by
09 U.S. Steel?

10 A. They could have been shipping
11 tags.

12 Q. What would they be attached to?

13 A. It would be attached to the
14 shipping vessels, possibly at the dome.

15 Q. So it could be on a truck tank,
16 it could be on a rail car, it could be on a
17 barge?

18 A. Yes.

19 Q. Could it be on a 55 gallon
20 drum?

21 A. No.

22 Q. Okay. In reference to the
23 documents that are marked as Exhibits 4
24 through 9, is it your understanding that
25 these are all documents that came from U.S.

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02 Steel's records, documents that were
03 maintained in the regular course of business
04 by U.S. Steel?

05 A. I believe so.

06 Q. The next exhibit is Exhibit 11.

07 - - -

08 (Whereupon the document was
09 marked, for identification purposes,
10 as Masaitis Exhibit Number 11.)

11 - - -

12 BY MR. DuPONT:

13 Q. Can you identify what this
14 document is?

15 A. It's the Chemical Safety Data
16 Sheet published by the Manufacturers Chemists
17 Association in 1960.

18 Q. All right. If we turn back to
19 Exhibit Number 3, which was the Material
20 Safety Data Sheet with an expiration date of
21 1991.

22 A. Is that it?

23 Q. Yes.

24 MR. CAIRONE: Jack, is your copy
25 upside down?

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02 THE WITNESS: Mine is as well.

03 MR. DuPONT: I apologize.

04 BY MR. DuPONT:

05 Q. When you look at Exhibit Number
06 3, the document makes reference to MCA Safety
07 Data Sheet SD-2. Is Exhibit Number 11 the
08 document that is being referenced?

09 A. Yes.

10 Q. You would agree with me that
11 Exhibit Number 11 -- and take your time to
12 look through it, Chemical Safety Data Sheet
13 SD-2 for benzene, does not provide any
14 warning that benzene can cause cancer.

15 A. In 1960 I don't think it did.
16 I don't believe I saw the word cancer in
17 here.

18 Q. And this is the document that
19 the Material Safety Data Sheet marked as
20 Exhibit Number 3 is referring to; correct?

21 A. Yes.

22 Q. Now, you had testified
23 previously that the Safety Data Sheet -- the
24 MCA Safety Data Sheet makes reference to
25 respiratory protection?

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02 A. I believe there is a section in
03 here that talks about respiratory protection.

04 Q. And I'm looking at Bates Number
05 USS 303.

06 A. Yes.

07 Q. And in Section 5.2.3, on that
08 page, continuing on to the next page, that
09 discusses the circumstances under which
10 respiratory protection should be worn?

11 A. Yes.

12 Q. Can you read for me the first
13 paragraph under Section 5.2.3?

14 A. "Severe exposure to benzene may
15 occur in tanks during equipment cleaning and
16 repairs, when decontaminating areas following
17 spills, or in cases of failure of piping or
18 equipment. Employees who may be subject to
19 such exposure should be provided with proper
20 respiratory protection and trained in its use
21 and care. Available types are described
22 below."

23 Q. So the first sentence sets
24 forth three circumstances under which
25 employees should be provided respiratory

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02 protection when exposed to benzene; correct?
03 MR. CAIRONE: Object to the
04 form.
05 MR. DuPONT: I'm sorry. I
06 apologize.
07 BY MR. DuPONT:
08 Q. The first sentence of that
09 paragraph that you just read describes three
10 circumstances of exposure to benzene. Is
11 that accurate?
12 MR. CAIRONE: Object to the
13 form. I think it said severe.
14 BY MR. DuPONT:
15 Q. Okay.
16 A. It talks about three
17 occurrences for severe exposure to benzene.
18 Q. And then the next sentence
19 says, that is under those types of severe
20 exposures to benzene, that respiratory
21 protection should be provided to employees;
22 correct?
23 A. Yes.
24 Q. And the examples given are
25 employees entering tanks during equipment

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02 cleaning and repairs. Number one. Correct?
03 A. Yes.
04 Q. Decontaminating areas following
05 spills. That's number two; correct?
06 A. Yes.
07 Q. And failure of piping or
08 equipment. That's circumstance number three;
09 correct?
10 A. Yes.
11 Q. So what the reader of this
12 document is told is, under these three types
13 of severe exposure circumstances, that
14 respiratory protection should be provided to
15 the employees; correct?
16 A. Yes.
17 Q. Then the document continues to
18 describe the types of respiratory protection
19 that are available for use in these severe
20 exposure situations. Is that accurate?
21 A. It -- there's a sub-paragraph
22 talking about self-contained breathing
23 apparatus. It talks about the available
24 types of respiratory protection at the end of
25 the first paragraph. I guess it can be

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02 assumed that it's making reference to the
03 first paragraph. But, in general, it's
04 talking about self-contained breathing
05 apparatus.

06 Q. Right. But what the first
07 paragraph says is that employees may be
08 subject to the exposures and pre-exposures
09 described in the first paragraph -- first
10 sentence of this paragraph. Employees who
11 may be subject to those types of exposures
12 should be provided with proper respiratory
13 protection. And then it goes on to list what
14 the types of respiratory protection and
15 describes them; correct?

16 A. Yes, it says, available type
17 are described below.

18 Q. Reading those three sentences
19 together, the reader is informed that these
20 are the types of respiratory protection to
21 use under these severe exposure
22 circumstances; correct?

23 A. Yes.

24 Q. It does not warn the reader
25 that respiratory protection is required under

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02 ordinary use of a product containing benzene,
03 does it?

04 A. I --

05 MR. CAIRONE: To be fair, do you
06 want him to read the whole -- it's a
07 long document. And as long as we're
08 -- we have an understanding that he's
09 either testifying from his memory of
10 his review or his review right now --

11 MR. DuPONT: I told him at the
12 outset of asking about this document
13 that if he feels he needs to, he's
14 available to read the document.

15 MR. CAIRONE: Okay. Then if the
16 question is, does this document --
17 Andrew, can repeat his question, then
18 I'd advise you to read it.

19 THE WITNESS: Sure.

20 MR. CAIRONE: Read the whole
21 thing, not -- unless he's asking about
22 this paragraph only.

23 BY MR. DuPONT:

24 Q. This is the -- look to Material
25 Safety Data Sheet that's marked Exhibit

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01 JOHN MASAITIS
02 Number 3. Under special protection
03 information, it refers the reader to pages six
04 and seven of the MCA Safety Data Sheet SD-2;
05 correct?

06 A. Yes.

07 Q. Okay. Pages six and seven of
08 the MCA Safety Data sheet is what we're
09 looking at right now, the section that begins
10 with, 5.2.3, Respiratory Protection, and
11 continues on to page seven, up to 5.2.4, head
12 protection. Is that accurate?

13 A. Yes.

14 Q. This is the information that
15 U.S. Steel, at pages six and seven, is
16 referring a reader to in the Material Safety
17 Data Sheet with respect to the use of
18 respiratory protection; correct?

19 A. Yes.

20 Q. You just told me that reading
21 the first paragraph of Section 5.2.3, reading
22 that paragraph together, what it tells you is
23 that respiratory protection is required under
24 the three circumstances that are set forth in
25 the first sentence of that paragraph.

403, cumulative
waste of time

0

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01

JOHN MASAITIS

02

Correct?

403 cumulative
waste of time

03

A.

Yes.

04

Q.

So reading the information that

05

U.S. Steel directs the reader of the Material

06

Safety Data Sheet marked as Exhibit 3 to

07

reference, what that tells the reader is that

08

respiratory protection is required under

09

these three severe exposure circumstances,

10

but it doesn't tell the reader that

11

respiratory protection is required during the

12

normal or intended use of a product

13

containing benzene. Is that correct?

14

MR. CAIRONE: Well, Section

15

5.2.3 speaks for itself. You can

16

answer the question.

17

THE WITNESS: It starts off by

18

talking about the severe exposures to

19

benzene that can occur under the

20

circumstances you described. It talks

21

about the different types of devices

22

that are available. And the -- it

23

doesn't mention anything regarding --

24

it talks about other circumstances of

25

exposure with -- so I don't know.

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01 JOHN MASAITIS

02 BY MR. DuPONT:

03 Q. Reading the first paragraph of
04 that section, the second sentence of that
05 paragraph, it says, "That employees who may
06 be subject to such exposures should be
07 provided with proper respiratory protection."
08 Such exposures references the three exposures
09 that are set forth in the first sentence of
10 that paragraph. Am I correct?

11 A. Yes.

12 Q. It does not reference the
13 ordinary or intended use of a product
14 containing benzene, does it?

15 A. No.

16 MR. CAIRONE: Is there a good
17 place to break, Andrew?

18 (Discussion held off the
19 record.)

20 MR. DuPONT: If you'd like to
21 take a break, I'm fine with taking a
22 break now.

23 - - -

24 (Discussion held off the
25 record.)

Masaitis, John

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01 JOHN MASAITIS

02 - - -

03 VIDEO TECHNICIAN: The time is
04 12:09. This is the end of tape number
05 two.

06 - - -

07 (Whereupon there was a recess in
08 the proceeding.)

09 - - -

10 VIDEO TECHNICIAN: The time is
11 12:20 p.m., this is the start of tape
12 number three.

13 - - -

14 (Whereupon the documents were
15 marked, for identification purposes,
16 as Masaitis Exhibit Numbers 12, 13 and
17 14.)

18 - - -

19 BY MR. DuPONT:

20 Q. Mr. Masaitis, while we were on
21 the break I've marked some additional
22 exhibits as Exhibit 12, which is Bates Number
23 316, Exhibit 13, which is Bates Number 314,
24 and Exhibit 14, which is Bates Number 315.

25 The first one I'm going to hand

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01 JOHN MASAITIS

02 to you is Exhibit 12. And can you simply
03 tell me what that document is and how that
04 document was used by U.S. Steel?

05 A. It's a document talking about
06 one degree nitration grade benzene.

07 Q. How is that document used by
08 U.S. Steel? I'll withdraw it.

09 Would you confirm that this
10 document does not convey warnings information
11 regarding benzene?

12 A. Well, it has -- has some, I
13 guess, characteristics, warnings in --
14 relating to health hazards.

15 Q. Health hazards, the use of
16 personal protective equipment?

17 A. No.

18 Q. The next document I'm going to
19 hand you is Exhibit 13.

20 MR. CAIRONE: Which Bates Number
21 is that one?

22 MR. DuPONT: Sure. Exhibit 13
23 is Bates Number 314.

24 MR. CAIRONE: Thanks.

25 BY MR. DuPONT:

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01 JOHN MASAITIS

02 Q. This document indicates that
03 it's an MCA Chem-Card. Is that correct?

04 A. Yes.

05 Q. And MCA refers to the
06 Manufacturing Chemists Association?

07 A. Yes.

08 Q. Of which U.S. Steel was a
09 member?

10 A. I believe the chemical division
11 was, yes.

12 Q. When did -- when you say the
13 chemical division, are you referring to USS
14 Chemicals?

15 A. Yes.

16 Q. Was U.S. Steel in and of itself
17 a member of the Manufacturing Chemists
18 Association?

19 A. The chemical division may
20 not -- for example, U.S. Steel steel
21 producing wasn't.

22 Q. Okay. When did USS Chemicals
23 become a member of the Manufacturing Chemists
24 Association?

25 A. I have no idea.

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01 JOHN MASAITIS

02 Q. Were they a member prior to
03 your beginning with the company in 1964?

04 A. I have no idea.

05 Q. My question to you, is this a
06 document that actually accompanied shipments
07 of benzene made by U.S. Steel, or was this a
08 document that was used by U.S. Steel as a
09 guide in developing its own labels?

10 A. I -- I have no idea how it was
11 used. I mean, the document speaks for
12 itself. I -- it says, Transportation
13 Emergency Guide.

14 Q. Okay. You don't know that this
15 document actually accompanied shipments of
16 U.S. Steel benzene?

17 A. I can't say that it did or it
18 didn't.

19 Q. The next document will be
20 Exhibit Number 14, and it's Bates labeled USS
21 315. Is this an MCA Manufacturing Chemists
22 Association Cargo Information Card for
23 benzene?

24 A. Yes.

25 Q. Would your answer be the same,

Masaitis, John

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01 JOHN MASAITIS

02 that you do not know how this document was
03 used by U.S. Steel?

04 A. Correct.

05 Q. And you have no knowledge of
06 this document accompanying shipments of
07 benzene made by U.S. Steel?

08 A. I don't know how the document
09 was used.

10 Q. Sir, would you agree with me
11 that threshold limit values are not intended
12 to protect against the carcinogenic effects
13 of chemicals?

14 A. No.

15 Q. You do not agree with that?

16 A. No.

17 MR. DuPONT: Mark this as
18 Exhibit 15.

19 - - -

20 (Whereupon the document was
21 marked, for identification purposes,
22 as Masaitis Exhibit Number 15.)

23 - - -

24 BY MR. DuPONT:

25 Q. Can you tell us what this

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01 JOHN MASAITIS

02 document is? And I'll -- I'll represent to
03 you that this -- the portion that I've copied
04 here are portions of a larger document that
05 was produced to us. Specifically Chapter
06 Five of this document. First I would like to
07 ask you, what is this document?

08 A. It looks like a section from
09 the Environmental Health Monitoring Manual
10 that was put together by U.S. Steel
11 Industrial Hygiene.

12 Q. Okay. And it's dated 1973?

13 A. Correct.

14 Q. In 1973, you were a senior
15 industrial hygiene engineer with U.S. Steel
16 -- United States Steel Corporation?

17 A. Yes.

18 Q. Were you involved with
19 developing this document?

20 A. Yes.

21 Q. I am turning to a page that is
22 Bates Number USS -- actually, strike that.

23 Chapter Five of this document
24 is what I've attached to it, along with the
25 cover, the title page, the Table of Contents

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01 JOHN MASAITIS

02 and forward. And Chapter Five generally
03 discusses TLVs, which are threshold limit
04 values. Correct?

05 A. Yes.

06 Q. It discusses what TLVs are, how
07 they're to be used and how they're not to be
08 used. Is that correct?

09 A. Yes.

10 Q. If you turn to the page that is
11 Bates Number USS 2356.

12 A. (Complying with request.)

13 Q. There is a section of this
14 Chapter Five that discusses the use and
15 misuse of TLVs; is that correct?

16 A. Yes.

17 Q. Can you read the first two
18 sentences of that section of the document for
19 the record, please?

20 A. "It is most important that TLV
21 data be correctly used. Misuse can occur
22 when uninformed individuals view these levels
23 as magic numbers, below which workers are
24 safe and above which they become ill."

25 Q. The document, in the next

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01 JOHN MASAITIS

02 sentence, goes on to discuss that there is
03 wide variation in of individual
04 susceptibility to exposure to air
05 contaminants; is that correct?

06 A. Yes.

07 Q. Which means that each person
08 can respond differently to exposure to a
09 chemical; is that correct?

10 A. Not each. It says, some
11 workers may. In other words, some workers
12 may be specifically influenced, different
13 than the majority of workers.

14 Q. Okay. Including at lower
15 levels of exposure?

16 A. Some individuals, yes.

17 Q. In fact, the document goes on
18 to explain that. Can you read the next
19 sentence that begins with "Some workers" into
20 the record?

21 A. "Some workers may experience
22 some discomfort from exposures at or below
23 the TLV, and a much smaller number may be
24 affected more seriously by aggravation of a
25 pre-existing condition or by development of

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01 JOHN MASAITIS

02 an occupational illness."

03 Q. And occupational illnesses
04 would include cancer; correct?

05 A. If it's contracted during the
06 occupation.

07 Q. Okay. Can you read the next
08 sentence into the record?

09 A. "Therefore, the TLV's as
10 published were intended to be used only as
11 guides in the control of health hazards and
12 not as levels which separate safe from
13 dangerous exposures."

14 Q. And that sentence would be
15 true, would it not, including as it relates
16 to the development of occupational illnesses
17 such as cancer from exposures; correct?

18 A. Yes.

19 Q. Sir, during the 1960s and 1970s
20 U.S. Steel was aware of the manner in which
21 end users -- strike that.

22 During the 1960s and 1970s U.S.
23 Steel was aware of the manner in which some
24 of its customers used benzene?

25 MR. CAIRONE: Object to form.

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01 JOHN MASAITIS

02 BY MR. DuPONT:

03 Q. Is that correct?

04 A. I can't say that.

05 Q. Was U.S. Steel aware, during
06 the 1960s and 1970s, that products made by
07 U.S. Steel, sold to its customers that
08 contained benzene would be placed into
09 products that would be used in the work
10 place?

11 A. Could have been.

12 Q. You've seen correspondence back
13 and forth between U.S. Steel and Radiator
14 Specialty Company; correct?

15 A. Yes.

16 Q. You would agree with me that
17 through those correspondence, U.S. Steel
18 became aware that its products raffinate was
19 used in a product manufactured by Radiator
20 Specialty Company called Liquid Wrench;
21 correct?

22 A. Yes.

23 Q. And U.S. Steel was aware that
24 raffinate contained benzene from one to three
25 percent, as much as 14 or 15 percent; is that

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01 JOHN MASAITIS

02 correct?

03 A. I know the average was three
04 percent.

05 Q. Okay. But it had benzene in
06 that range; correct?

07 A. Yes.

08 Q. And U.S. Steel was aware that
09 Radiator Specialty Company was putting
10 raffinate, or the benzene into the Liquid
11 Wrench product; correct?

12 A. Yes.

13 Q. And U.S. Steel was also aware
14 that people who might be mechanics and even
15 people in their homes would use Liquid
16 Wrench; is that correct?

17 A. I imagine if you were
18 mechanically inclined, working for U.S.
19 Steel, you would know that.

20 Q. Did U.S. Steel do anything to
21 conduct any kind of audit on how its
22 customers used products containing benzene?
23 In other words, did it do anything to learn
24 what its customers were doing with U.S. Steel
25 benzene containing products that it sold to

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01 JOHN MASAITIS

02 customers?

03 A. Not to my knowledge.

04 Q. Did U.S. Steel do anything,
05 prior to selling benzene to a company, in
06 order to determine what that company knew, if
07 anything, about the health hazards of benzene
08 during the 1970s and prior to that period?

09 A. Did they do anything?

10 Q. Yes.

11 A. Other than, you know, their
12 knowledge of specific companies, I don't know
13 if they really -- I can't say if they did
14 anything or they didn't do anything. You
15 know, like I say, if you're selling a product
16 to a large company and you know that company
17 is -- you know, makes petroleum products, or
18 something like that, you would know -- have
19 some idea as to what they were doing with it.

20 Q. But U.S. Steel didn't, prior to
21 deciding its own -- strike that.

22 Prior to deciding to sell
23 benzene to a company, U.S. Steel didn't go
24 and do any audits to determine what that
25 company it was selling benzene to knew about

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Objection: 402, Relevance; no sales of benzene in this case

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01 JOHN MASAITIS

02 the health hazards of benzene?

03 MR. CAIRONE: Object to the
04 form.

05 BY MR. DuPONT:

06 Q. Is that correct?

07 A. To my knowledge, they did --
08 conducted no audits of their customers.

09 Q. And they didn't do anything to
10 affirmatively determine what that company did
11 or did not know about benzene; correct?

12 A. I'm not aware of U.S. Steel
13 sending out any questionnaires regarding what
14 the company knew about benzene, or any
15 activities such as that.

16 Q. No questionnaires, no audits,
17 no other communications --

18 A. They have may to some people in
19 other divisions. I'm not aware of that, no.

20 Q. You have no knowledge of U.S.
21 Steel doing that; correct?

22 MR. CAIRONE: Asked and
23 answered.

24 THE WITNESS: I have no
25 knowledge of it. I didn't do it. I'm

Objection

Object
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01 JOHN MASAITIS
02 not aware of it. Someone else may
03 have done it, I didn't.)

602, speculation

04 MR. DuPONT: Mark the next
05 document as Exhibit Number 16.

06 - - -

07 (Whereupon the document was
08 marked, for identification purposes,
09 as Masaitis Exhibit Number 16.)

10 - - -

11 BY MR. DuPONT:

12 Q. For the record, that's Bates
13 Number USS 3850 to USS 3859.

14 Sir, have you seen this
15 document before?

16 A. Not that I recall.

17 Q. On the first page of the
18 document it says, United States Steel
19 Corporation, Industrial Relations Department.
20 Do you see that?

21 A. Yes.

22 Q. Are you aware of the United
23 States Steel Corporation having an industrial
24 relations department?

25 A. Yes.

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01 JOHN MASAITIS

02 Q. (At the bottom of the document)
03 it says, Prepared By Industrial Hygiene
04 Section, Medical Division. Are you aware
05 that U.S. Steel had an industrial hygiene
06 section?

07 A. Yes.

08 Q. Okay. They say we're not
09 supposed to ask questions we don't know the
10 answer to.

403, waste of time
not a question

11 The title of this document is
12 "Health Hazards in Use of Solvents For Motor
13 Cleaning". Do you see that?

14 A. Yes.

15 Q. Are you able to tell me what
16 the date of this document is?

17 A. That's exactly what I was
18 looking at. It seems like -- I see a 1953
19 date, but -- I -- I don't see any other
20 dates, other than that 1953 date.

21 Q. Maybe that first paragraph,
22 that 1953 date of this document is the
23 context for it. In reading that first
24 paragraph, does it appear to you that there
25 was an issue within U.S. Steel regarding the

Objectio
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01 JOHN MASAITIS

02 desirability of using organic solvents for
03 cleaning motors?

04 A. Correct.

05 Q. Then it goes on that the
06 industrial hygiene section of U.S. Steel
07 apparently was cooperating with the
08 maintenance committee of U.S. Steel to
09 investigate solvents to be used for cleaning
10 motors. Do you see that?

11 A. Yes.

12 Q. And it appears that some report
13 of the results of the investigation made by
14 the industrial hygiene department were
15 transmitted or given to the maintenance
16 company -- maintenance committee on
17 January 15th of 1953. Do you see that?

18 A. Yes.

19 Q. And it goes on to say that the
20 intention of this document, or the desire of
21 this document is to supplement the
22 information previously transmitted on
23 January 15 regarding the use of solvents for
24 cleaning motors. The industrial hygiene
25 section investigation of that property.

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01 JOHN MASAITIS

02 A. Where are you reading?

03 Q. Sure, the last sentence of that
04 first paragraph.

05 A. Shall desire at this time to
06 supplement, yes.

07 Q. Is that a fair interpretation
08 of that -- of this document?

09 A. Yes.

10 Q. Then what follows through this
11 document is recommendations that the
12 industrial hygiene committee are making
13 regarding the use of organic solvents;
14 correct?

15 A. I --

16 MR. CAIRONE: Do you need to
17 read? I mean, I don't know that it's
18 fair to ask these questions about a 10
19 page document that he just said he's
20 never seen.

21 MR. DuPONT: Sure.

22 BY MR. DuPONT:

23 Q. And again, I gave you the
24 instruction earlier, if you need to look at
25 the document, please feel free to do.

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01 JOHN MASAITIS

02 A. It talks about the utilization
03 factors, fire hazards, health hazards, tables
04 listing the health hazards and fire hazards
05 in motor cleaning solvents. And your
06 question pertaining --

07 Q. Sure. My question is simply,
08 is it a fair interpretation of this document
09 that what is happening to the industrial
10 hygiene committee is providing advice and
11 guidance to the maintenance committee
12 regarding the use of organic solvents for
13 cleaning motors? Is that fair?

14 MR. CAIRONE: The fairest
15 interpretation is gleaned from reading
16 it, which I still think you need to do
17 if you're going to ask about what the
18 fairest interpretation is. I know
19 you -- it's a long document and you
20 would rather not, but...

21 THE WITNESS: Well, I can sit
22 here and read it.

23 (Reading document.)

24 BY MR. DuPONT:

25 Q. Sir, if I could interrupt you

Masaitis, John

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01 JOHN MASAITIS

02 there.

03 A. Yes.

04 Q. (Have you read enough of the
05 document to be able to determine that,
06 generally speaking, what the industrial
07 hygiene committee is doing here is providing
08 guidance and advice to the maintenance
09 committee regarding the use of organic
10 solvents for cleaning engines?)

11 A. (After getting into the
12 document, I have a better understanding of
13 what it is. And I do recall now seeing parts
14 of this document. I know -- get an
15 understanding of what its purpose was.)

16 Q. Okay.

17 Is it fair to say, generally,
18 what was happening here is, the industrial
19 hygiene committee at U.S. Steel was providing
20 advice and consultation to the maintenance
21 committee of U.S. Steel regarding the use of
22 organic solvents; correct?

23 A. Yes.

24 Q. If you look at page two of the
25 document, which is Bates numbered USS 3852.

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01 JOHN MASAITIS

02 MR. CAIRONE: Just to be clear,
03 there are two page twos. So you're
04 looking at the page two that is 3852?

05 MR. DuPONT: Yes. Right.

06 BY MR. DuPONT:

07 Q. Bates Number 3852, if you look
08 at the first full paragraph. Can you read
09 into the record what the industrial hygiene
10 department at U.S. Steel is telling the
11 maintenance department? Can you read that
12 first sentence into the record?

13 A. Beginning with, "In any event"?

14 Q. Yes, sir.

15 A. "In any event, every effort
16 should be made to exclude carbon
17 tetrachloride and benzol for cleaning
18 purposes. These are the most toxic of
19 organic solvents and excessive exposure to
20 them may result in severe illness. These
21 solvents may be found in various mixtures
22 available through manufacturers and
23 suppliers. Cleaning solvents are generally
24 sold under a trade name or trade number, so
25 that the user has very little information

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01 JOHN MASAITIS
02 upon which to evaluate the fire and health
03 hazard potentials. We should like,
04 therefore, to urge that when you contemplate
05 the use of any cleaning solvent, a quart
06 sample be submitted to our Industrial Hygiene
07 Section, Medical Division Industrial
08 Relations Department so that it may be
09 analyzed and the health and fire hazards
10 evaluated."

11 Q. Okay. So what the industrial
12 hygiene committee is telling the maintenance
13 committee within U.S. Steel is, don't use
14 benzene for cleaning purposes; correct?

15 MR. CAIRONE: Object to the
16 form.

17 THE WITNESS: It says, "In any
18 event every effort should be made to
19 exclude carbon tetrachloride and
20 benzol for cleaning purposes."

21 BY MR. DuPONT:

22 Q. Right.

23 A. To exclude.

24 Q. Exclude it, don't use it;
25 correct?

0

Continuing Objections to the use of this document 402, 403, 802

through the end of the page

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01 JOHN MASAITIS

02 A. Every effort -- no, it's
03 saying, every effort should be made to
04 exclude.

05 Q. All right. By exclude, it
06 means eliminate benzene from use; correct?

07 A. Yes.

08 Q. All right. One of the reasons
09 given is that benzene, along with carbon
10 tetrachloride, are the most toxic of organic
11 solvents. Correct?

12 MR. CAIRONE: Well, we've read
13 that into the record twice now and it
14 says what it says.

15 BY MR. DuPONT:

16 Q. Is that correct?

17 A. Yes.

18 MR. CAIRONE: Are you asking
19 whether it says that again? Is
20 that -- because it does.

21 BY MR. DuPONT:

22 Q. It goes on to say that
23 excessive exposure to benzene may result in
24 severe illness; correct?

25 A. Yes.

0
Objections to the use of the document: all designations on this page; 402, 403, 802

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01 JOHN MASAITIS

02 Q. All right. Can you show me on
03 any Material Safety Data Sheet or any
04 document that was provided to any U.S. Steel
05 customer purchasing benzene prior to 1978, or
06 during that year, where that information is
07 conveyed, that benzene should not be used as
08 a cleaning solvent?

09 A. No. I can't show you anything
10 that states specifically it shouldn't be used
11 for cleaning purposes, and I can't show you
12 instances where it should be used for any
13 other purpose.

14 Q. All right. The document says,
15 you also read for the record, cleaning
16 solvents are generally sold under a trade
17 name or trade numbers that the user has very
18 little information upon which to evaluate the
19 fire and health hazard potentials. As an
20 industrial hygienist, that's a problem, isn't
21 it?

22 MR. CAIRONE: Object to the
23 form.

24 THE WITNESS: This -- yes, it's
25 a problem. And that's why --

0
Continuing
objections
to the
questions
on the
document:
402,
403,
802
MIL
To the
end of
this
page

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(DAVIS) VOL 1

Transcript of Masaitis, John

Saturday, August 15, 2020

Masaitis, John

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01 JOHN MASAITIS
02 BY MR. DuPONT:
03 Q. And the reason there is --
04 MR. CAIRONE: Let him finish his
05 answer.
06 BY MR. DuPONT:
07 Q. And the reason it's a problem
08 is that you're not providing -- strike that.
09 Can you turn to page 3858,
10 please?
11 A. Page 3858?
12 Q. Right. Does this page of the
13 document provide a pictorial depiction, a
14 drawing, of the types of respiratory
15 protection and ventilation that should be
16 used in conjunction with cleaning solvents?
17 A. It's a diagram showing a man
18 with personal protective equipment spray
19 cleaning a part.
20 Q. And the personal protective
21 equipment, what type of respirator is he
22 wearing?
23 A. A chemical cartridge, organic
24 vapor.
25 Q. What is that in front of the

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01 JOHN MASAITIS

02 respirator?

03 A. Face shield.

04 Q. Is he wearing any type of
05 personal protective equipment, besides his
06 clothing?

07 A. Looks like he's wearing gloves
08 that should be impervious to the material
09 that he's cleaning with, and also coveralls
10 that should be impervious.

11 Q. What type of ventilation is
12 depicted in this diagram?

13 A. It's a spray-type booth with
14 baffle plates and an exhaust stack and
15 explosive proof light fixtures.

16 Q. And the exhaust stack -- the
17 purpose of the exhaust stack is to suck
18 vapors out of the air where the solvent
19 cleaning is taking place?

20 A. Yes.

21 Q. Sir, I would like to turn your
22 attention back to some of the changes that
23 happened in the late 1970s and 1980s
24 regarding the OSHA benzene standard. We
25 discussed that in 1977 the emergency

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01 JOHN MASAITIS

02 temporary standard was issued by OSHA.

03 Correct? Do you recall that?

04 A. Yes.

05 Q. And the result of that was to
06 lower the permissible exposure level from 10
07 part per million to one part per million?

08 A. That was one of the purposes,
09 yes.

10 Q. Then, are you aware that the
11 American Petroleum Institute and other
12 members of industry litigated OSHA's decision
13 up to the United States Supreme Court?

14 A. Yes.

15 Q. Do you know when the reduction
16 of the permissible exposure level from 10
17 part per million to one part per million
18 became final?

19 A. I believe it was the mid to
20 late eighties.

21 Q. Do you know what resulted or
22 what happened in order for the exposure
23 standard to become final in the mid to late
24 eighties?

25 MR. CAIRONE: Object to the

All of this starting on page
138: Relevance; MIL re
lobbying efforts.

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01 JOHN MASAITIS

02 form.

03 THE WITNESS: I have some recall

04 regarding the rule making process.

05 BY MR. DuPONT:

06 Q. What do you recall?

07 A. Specifically pertaining to

08 what?

09 Q. What resulted in the benzene
10 standard reduction from 10 part per million
11 to one part per million becoming the final
12 rule?

602, foundation

802, hearsay



13 MR. CAIRONE: Object to the
14 form.

15 BY MR. DuPONT:

16 Q. How did that happen? What
17 changed between 1977 and 1985 or 1986?

18 MR. CAIRONE: Object to the
19 form.

20 THE WITNESS: After reviewing
21 the OSHA proposal, there was a large
22 majority of toxicologists,
23 epidemiologists, industrial hygienists
24 who took exception to some of the
25 studies that OSHA used in its

Masaitis, John

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01

JOHN MASAITIS

02

documentation for the need. And in

602 foundation

03

the rule making process presented

802 hearsay

04

testimony from more authoritative

05

sources objecting to the need to that

06

standard at that time, and other

07

portions of it.)

08

BY MR. DuPONT:

09

Q. And apparently it's your

10

understanding that by 1985, 1986 the standard

11

became final because there was now a

12

consensus that benzene causes leukemia. Is

13

that what you're telling me?)

14

MR. CAIRONE: Form.

15

THE WITNESS: There was -- there

16

was interaction amongst the people

17

participating in the rule making here

18

in the organizations and eventually

19

they came to a consensus.)

20

BY MR. DuPONT:

21

Q. Should U.S. Steel have warned

22

that benzene causes cancer in 1977, when the

23

federal government issued the emergency

24

temporary standard?

25

A. I don't think so.

Masaitis, John

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01 JOHN MASAITIS

02 Q. Is it your position that U.S.
03 Steel should not have -- when I say you, I
04 mean the company. Was it U.S. Steel's
05 position that it should not have warned that
06 benzene causes leukemia until the standard
07 became final in 1985 or 1986?

08 A. There is an established
09 procedure that the country has regarding rule
10 makings, and the procedure was followed. And
11 that's pretty much, you know, what happened
12 during that time period.

13 Q. I'm not -- I'm not asking about
14 the country's procedures, I'm asking about
15 U.S. Steel's procedures.

16 A. Well --

17 MR. CAIRONE: Let him ask his
18 question.

19 BY MR. DuPONT:

20 Q. At what point in time -- at
21 what point in time is U.S. Steel satisfied
22 that there is enough information that a
23 particular chemical can cause cancer such
24 that it should issue those warnings?

25 MR. CAIRONE: Object to the

Masaitis, John

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01 JOHN MASAITIS

02 form.

03 THE WITNESS: I can't say

04 specifically when each and every

05 individual of U.S. Steel, you know,

06 may -- you know, was convinced that

07 indeed that benzene was a carcinogen.

08 I can't even recall specifically when

09 I was, you know, convinced to

10 subscribe to it. All I can recall is

11 that when the standard became final,

12 then the -- it -- yes, then it's a

13 carcinogen. It's that -- it has to be

14 accepted because it's the law. But

15 you have to go through the rule making

16 procedures.

17 BY MR. DuPONT:

18 Q. So let me see if I can

19 understand this. In 1977 the federal

20 government, through OSHA, says benzene is a

21 carcinogen; correct?

22 MR. CAIRONE: Object to form.

23 THE WITNESS: They said they

24 suspect that it was a carcinogen.

25 BY MR. DuPONT:

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01 JOHN MASAITIS

02 Q. Are you telling me that the
03 federal government did not say in 1977 that
04 benzene is a carcinogen?

05 A. In 1977, when the rule making
06 process began, yes. Then, yes.

07 Q. Right. Okay. And U.S. Steel
08 did not accept that, did it?

09 A. Well, the majority of the
10 occupational health community didn't accept
11 it.

12 MR. DuPONT: Objection, move to
13 strike.

14 BY MR. DuPONT:

15 Q. I'm not asking you about the
16 occupational health community.

17 A. I can't --

18 Q. Sir, U.S. Steel did not accept
19 in 1977 that the federal government said that
20 benzene causes cancer, did it?

21 MR. CAIRONE: Object to form.

22 THE WITNESS: Personally, I did
23 not. Other members of U.S. Steel, I
24 don't know what each and every member
25 of the corporation thought about the

Masaitis, John

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01 JOHN MASAITIS

02 emergency temporary standard.

03 BY MR. DuPONT:

04 Q. You're testifying on behalf of
05 United States Steel. I'm asking you, is it
06 your testimony, as a representative of United
07 States Steel, that United States Steel
08 Corporation did not accept, in 1977, that the
09 federal government said that benzene is a
10 carcinogen?

11 MR. CAIRONE: Object to the
12 form.

13 THE WITNESS: Here again, how
14 each and every individual thought, I
15 think the corporation participated in
16 rule making hearings through the AISI,
17 as I recall. So maybe they didn't
18 agree.

19 BY MR. DuPONT:

20 Q. So you think maybe U.S. -- you
21 think U.S. Steel did agree with the federal
22 government that benzene was a carcinogen in
23 1977?

24 MR. CAIRONE: Object to the
25 form.

Masaitis, John

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01 JOHN MASAITIS

02 THE WITNESS: No, I don't think
03 so.

04 BY MR. DuPONT:

05 Q. So is what you're telling me,
06 as a representative from U.S. Steel, is that
07 it did not accept that the government
08 declared benzene as a carcinogen in 1977?

09 MR. CAIRONE: Object to the
10 form. Hold on a minute, because this
11 is about the seventh time. He's doing
12 the best job he can, I think, to
13 answer what is an unfair question and
14 very unclear. So he's answered it six
15 times to the best of his ability.

16 THE WITNESS: I'm saying that I
17 did not think that it was from the
18 information that I had time to go
19 through and read. What each and every
20 member thought of U.S. Steel, I can't
21 say.

22 MR. CAIRONE: Let me also say,
23 please, that I don't believe this was
24 a subject designated for testimony.
25 So our obligation under the

Masaitis, John

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01 JOHN MASAITIS
02 Pennsylvania Rules of Civil Procedure
03 is to designate somebody who is able
04 to testify about what the corporation
05 either knows or has access to. And
06 this whole rule making process, I
07 don't think it -- if it's there and
08 you can show it to me --

09 MR. DuPONT: I'm not talking
10 about the rule making process.

11 MR. CAIRONE: Sure, you are.

12 MR. DuPONT: I'm talking
13 about --

14 BY MR. DuPONT:

15 Q. My question to you is, I'm
16 asking you, as a representative of U.S.
17 Steel, not you personally, not what everybody
18 at U.S. Steel knew or accepted. I'm asking
19 you, when the federal government in 1977 said
20 that benzene was a carcinogen, did U.S. Steel
21 accept what the federal government said, or
22 did it decide that it was not going to accept
23 what the federal government's determination
24 was and it was not --

25 MR. CAIRONE: Objection to the

Masaitis, John

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01 JOHN MASAITIS

02 form.

03 BY MR. DuPONT:

04 Q. -- going to consider benzene a
05 carcinogen?

06 MR. CAIRONE: Object to the
07 form.

08 THE WITNESS: What U.S. Steel
09 decided, it would participate in the
10 rule making process, as each and every
11 affected party had the right to do.
12 And that's what was done. In other
13 words, we were there to learn too.
14 Show us what you're talking about.
15 Show us your studies. Give us the
16 information that you have, you know.
17 It's something that, you know, has to
18 be done, just like any other
19 reasonable event, you know. Why are
20 you saying this? Show me your
21 studies.

22 BY MR. DuPONT:

23 Q. So when the federal government
24 in 1977 said that benzene was a carcinogen,
25 U.S. Steel -- U.S. Steel did not accept that?

Masaitis, John

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01 JOHN MASAITIS

02 MR. CAIRONE: That is about the
03 tenth time that the same question has
04 been answered. So you can have one
05 more shot at it and then I'm going to
06 tell him, no more.

07 THE WITNESS: U.S. Steel, like
08 the other parties involved, wanted to
09 see the information that OSHA had put
10 together to come up with this
11 conclusion. And because up until that
12 point in time, we didn't think that
13 there was sufficient information out
14 there. So we wanted to participate in
15 hearings to personally see what OSHA
16 had, that I shouldn't -- to understand
17 where they were coming from.

18 BY MR. DuPONT:

19 Q. Part of what U.S. Steel did as
20 a member of the American iron and steel
21 industry, was to hire its own medical
22 consultants to submit information to OSHA in
23 the context of the ruling; is that correct?

24 A. I can't recall who was hired or
25 -- I can't answer that.

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01 JOHN MASAITIS

02 Q. Are you aware, from reviewing
03 the documents from U.S. Steel, that the
04 American Iron and Steel Industry, that
05 organization, hired medical professionals to
06 submit information to OSHA concerning benzene
07 rule changes?

08 MR. CAIRONE: Can you point to
09 me, please, before we continue this
10 line, where you designated this as a
11 subject for the corporate deposition.
12 Then maybe we can continue. Because
13 if you didn't, which is what I think
14 is the case, he has no obligation to
15 review the documents or prepare
16 because it wasn't a subject
17 designated. So is it in your notice
18 or not?

19 MR. DuPONT: Are you telling me
20 that the company's knowledge of the
21 health hazard of benzene warnings and
22 issues related to that aren't in the
23 Notice of Deposition?

24 MR. CAIRONE: That's not what
25 you're asking. You're asking him

Masaitis, John

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01 JOHN MASAITIS
02 about the rule making process leading
03 up to litigation challenging the OSHA
04 standard in '77. And it's a
05 completely discrete topic.

06 MR. DuPONT: I'm asking about
07 documents that have been produced in
08 this litigation.

09 MR. CAIRONE: Well --

10 MR. DuPONT: -- By U.S. Steel,
11 and that I believe is a subject of the
12 Notice of Deposition.

13 MR. CAIRONE: Well, I'm
14 objecting to the whole line of
15 questioning and the fact that you
16 didn't notice it as a topic. And --
17 go ahead.

18 BY MR. DuPONT:

19 Q. Sir, are you aware that U.S.
20 Steel, as a member of the American Iron and
21 Steel Industry, hired medical experts to
22 submit information to OSHA in the context of
23 the rule making procedures?

24 MR. CAIRONE: Asked and
25 answered.

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01 JOHN MASAITIS

02 THE WITNESS: I personally can't
03 recall who the AISI hired and what
04 their particular expertise was.

05 - - -

06 (Discussion held off the
07 record.)

08 - - -

09 BY MR. DuPONT:

10 Q. Sir, I'm going to hand you a
11 document which I've pulled from your
12 materials. I'm handing it to your counsel.
13 It's being marked as Exhibit Number 17.

14 - - -

15 (Whereupon the document was
16 marked, for identification purposes,
17 as Masaitis Exhibit Number 17.)

18 - - -

19 THE WITNESS: '82 Material
20 Safety Data Sheet.

21 BY MR. DuPONT:

22 Q. It's Bates Number USS 8892 to
23 8893. And you've identified for us that that
24 is a Material Safety Data Sheet for benzene
25 dated 1982.

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01 JOHN MASAITIS

02 A. Yes.

03 Q. And that Material Safety Data
04 Sheet does provide a warning that exposure to
05 benzene can cause leukemia?

06 MR. CAIRONE: I'm sorry, did I
07 distract you? Can you repeat that?

08 THE WITNESS: It does, yes.

09 BY MR. DuPONT:

10 Q. And that Material Safety Data
11 Sheet is dated 1982, which is before the
12 finalization, reduction of the benzene
13 exposure permissible -- strike that.

14 1982 is before OSHA finalized
15 the reduction of the benzene permissible
16 exposure level from 10 to one part per
17 million, is it not?

18 A. Yes.

19 Q. And this is the first time that
20 United States Steel Corporation put a cancer
21 warning on a benzene Material Safety Data
22 Sheet; is that correct?

23 A. Material Safety Data Sheets
24 that I have seen, yes. I have seen in regard
25 to this litigation. I can't recall if this

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01 JOHN MASAITIS

02 was the very first one ever.

03 Q. Okay. Do you have any
04 knowledge that United States Steel
05 Corporation issued Material Safety Data
06 Sheets prior to 1982 that said benzene can
07 cause cancer?

08 A. I have no knowledge of that.

09 Q. Now, you've discussed raffinate
10 before as a product that contained anywhere
11 from 1 to 14 or 15 percent benzene, as
12 manufactured by U.S. Steel; correct?

13 A. I've seen documents saying one
14 to 14 percent.

15 Q. You also testified that it's
16 your understanding on average the product
17 contained three percent benzene?

18 A. Yes.

19 - - -

20 (Whereupon the document was
21 marked, for identification purposes,
22 as Masaitis Exhibit Number 18.)

23 - - -

24 BY MR. DuPONT:

25 Q. I'm going to hand you what I've

Same
objecti
ons

5

Masaitis, John

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01 JOHN MASAITIS
02 marked as Exhibit Number 18. Sir, is that a
03 Safety Data Sheet for raffinate?
04 A. Yes, it is.
05 MR. CAIRONE: This one has
06 handwritten notes on it.
07 (Discussion held off the
08 record.)
09 BY MR. DuPONT:
10 Q. Sir, is this dated 1969? Can
11 you tell that, looking at the top righthand
12 corner of the document?
13 A. It appears to be '69.
14 Q. And if you look at the page
15 that is Bates Number USS 18, that contains
16 certain health warnings.
17 A. Yes.
18 Q. Can you read the first sentence
19 in that paragraph into the record?
20 A. "Raffinate has an anesthetic
21 effect on the body when inhaled in sufficient
22 quantities (sic)."
23 Q. When you say an anesthetic
24 effect, what are you talking about?
25 MR. CAIRONE: That's what the

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01 JOHN MASAITIS
02 document says. Are you asking him
03 what he understands that to mean?
04 MR. DuPONT: Sure.
05 BY MR. DuPONT:
06 Q. What is meant by anesthetic
07 effect?
08 A. An anesthetic is something that
09 is a numb effect.
10 Q. All right. Turn to the same
11 paragraph, last sentence.
12 A. "Chronic exposure to low
13 concentrations of the vapors can cause severe
14 damage to blood-forming structures."
15 Q. Is that talking about the
16 vapors in the raffinate itself, or the vapors
17 in the benzene and raffinate.
18 A. Well, I think that it's talking
19 to the benzene concentration in the
20 raffinate.
21 Q. Does it say that?
22 A. No, but it's implied, in my
23 mind.
24 Q. If you turn under -- to the
25 warning properties on the same page. It

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01 JOHN MASAITIS

02 says, "Raffinate does not have good warning
03 properties." What's meant by warning
04 properties?

05 A. Well, something that would
06 cause the individual to avoid it.

07 Q. Can you go to page six of the
08 document, please?

09 A. (Complying with request.)

10 Q. The first sentence of this
11 paragraph repeats what we saw on page two of
12 the document, which is that repeated
13 exposures at low vapor concentrations over a
14 period of time can result in chronic
15 poisoning.

16 MR. CAIRONE: Object to the
17 form. I don't think it repeats it.
18 It says something different, but --

19 THE WITNESS: It's somewhat
20 similar, but it's not exactly. One
21 talks about blood-forming structures
22 and the other talks about chronic
23 poisoning.

24 BY MR. DuPONT:

25 Q. Okay. And the chronic

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01 JOHN MASAITIS
02 poisoning reaction that's being referred to
03 on page six, that reaction will differ in
04 people, depending on their own susceptibility
05 to exposure to the vapors. Is that accurate?

06 A. It doesn't mean that each and
07 every individual has its own susceptibility.
08 It's -- what it means, that there are people
09 who may be more sensitive to particular
10 materials, as opposed to the rest of the
11 population.

12 Q. So those particular people may
13 contract the chronic poisoning at lower
14 levels than other members of the population.
15 Is that what that means?

16 A. Relatively speaking.

17 Q. If you go to the last sentence
18 in this paragraph, it discusses that in
19 severe cases the bone marrow is affected so
20 as to produce blood cell deficiencies that
21 can result in death. Do you see that?

22 A. Yes.

23 Q. Are you familiar with a
24 condition, aplastic anemia?

25 A. I've heard of it. I'm not

Masaitis, John

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01 JOHN MASAITIS

02 going to answer any questions regarding the
03 medical aspects of it.

04 Q. All right. Do you know whether
05 the blood cell deficiencies that can result
06 in death that are being referred to here are
07 aplastic anemia?

08 A. I can't answer.

09 MR. SYKES: Okay, I'm really not
10 trying to be uncooperative, but I
11 think we have to take a lunch break
12 here. There are going to be other
13 questions, I'm sure.

14 (Discussion held off the
15 record.)

16 MR. DuPONT: I may be done. I
17 may only have one or two more minutes
18 of questioning. So why don't we go
19 off the record and see what everybody
20 else has.

21 VIDEO TECHNICIAN: The time is
22 1:19, going off the record.

23 - - -

24 (Discussion held off the
25 record.)

Masaitis, John

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01 JOHN MASAITIS

02 - - -

03 VIDEO TECHNICIAN: This is the
04 beginning of tape number four, the
05 time is 1:22 p.m.

06 BY MR. NEUER:

07 Q. Mr. Masaitis, my name is Ray
08 Neuer. I'm a lawyer from Houston and I
09 represent a company called T H Agriculture
10 and Nutrition, LLC. Have you and I ever met
11 before, sir?

12 A. No.

13 Q. Met today, earlier?

14 A. Yes.

15 Q. If I ask you a question that
16 you do not understand, will you please ask me
17 to rephrase it?

18 A. Yes.

19 Q. You've been asked some
20 questions that kind of bump up on medical
21 aspects in the case, and it's true, is it
22 not, you're not a medical doctor; correct?

23 A. Correct.

24 Q. You're not an epidemiologist;
25 correct?

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01 JOHN MASAITIS

02 A. That's correct.

03 Q. You were an industrial

04 hygienist by trade, so you have some

05 knowledge regarding the benzene issue that

06 existed during the 1970s. True?

07 A. Yes.

08 Q. However, with respect to

09 specific issues regarding expected latency

10 periods due to exposure of benzene as far as

11 certain types of leukemia are concerned,

12 that's beyond your area of expertise. True?

13 A. True.

14 Q. With respect to the specific

15 mechanism through which exposure to benzene

16 may or may not cause damage to the blood

17 forming organs, that's beyond your area of

18 expertise.)

19 A. Correct.

20 Q. With regard to what specific

21 types of leukemia may or may not be

22 associated with exposure to benzene, that is

23 beyond your area of expertise.

24 A. Yes.

25 Q. With respect to what levels of

Masaitis, John

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01 JOHN MASAITIS
02 exposure the scientific community expects to
03 see in order to say that there is a link
04 between benzene exposure and certain types of
05 leukemia, that's beyond your area of
06 expertise. True?
07 A. Yes.
08 Q. But you do understand, as an
09 industrial hygienist, that there are doctors
10 and epidemiologists out in the scientific
11 community who study these issues at a very
12 minded level; correct?
13 A. Correct.
14 Q. And you would leave it to those
15 individuals to address these issues in this
16 case. True?
17 A. True.
18 Q. Now, earlier in your deposition
19 you were asked some questions about your
20 knowledge of a company called
21 Thompson-Hayward Chemical Company. Do you
22 recall that?
23 A. Yes.
24 Q. I believe your testimony was,
25 is that before this case you didn't know

Masaitis, John

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01 JOHN MASAITIS

02 anything about Thompson-Hayward Chemical
03 Company. True?

04 A. Yes.

05 Q. And your knowledge of
06 Thompson-Hayward Chemical Company is
07 essentially limited to the information that
08 was provided to you in a notebook that was
09 given to you in preparation for this
10 deposition. True?

11 A. Yes.

12 Q. But, of course, in that
13 notebook there was a good deal of information
14 that had nothing whatsoever to do with
15 Thompson-Hayward Chemical Company. True?

16 A. Yes.

17 Q. I believe you indicated that
18 your knowledge of Thompson-Hayward Chemical
19 Company was limited, as far as documents are
20 concerned, to some invoices that reflected
21 that USS Chemicals had supplied benzene to
22 the Chicago office of Thompson-Hayward
23 Chemical Company. True?

24 A. Yes.

25 Q. So that's one thing that you do

Masaitis, John

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01 JOHN MASAITIS

02 know about Thomas Hayward Chemical Company,
03 is that it purchased benzene from USS
04 Chemicals. True?

05 A. Yes.

06 Q. As far as what particular
07 locations Thompson-Hayward Chemical Company
08 may have had throughout the country and what
09 specifically they did or what they
10 distributed, you don't have any knowledge of
11 that, beyond what you saw in the documents
12 that you reviewed in preparation for your
13 deposition. True?

14 A. Yes.

15 Q. Okay.

16 MR. SYKES: And may I interject,
17 and what he was told by counsel, which
18 is privileged.

19 BY MR. NEUER:

20 Q. True. You don't want me to ask
21 about that. Okay.

22 In looking through the
23 notebook, I did not see that you had reviewed
24 the deposition of a man named Steve Carter.
25 Have you seen that deposition, sir?

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01 JOHN MASAITIS

02 A. No.

03 Q. He was presented as the
04 corporate representative of Thompson-Hayward
05 Chemical Company. You have not read his
06 deposition. True?

07 A. True.

08 Q. You have not read the
09 deposition of a gentleman by the name of
10 Charles Graham, who was presented as the
11 corporate representative of Handschy, have
12 you, sir?

13 A. No.

14 Q. So with respect to what those
15 individuals may have testified to regarding
16 the relationship between Thompson-Hayward
17 Chemical Company and Handschy, we'd have to
18 look to those depositions and that testimony.
19 True?

20 A. Yes.

21 Q. Now, earlier in your deposition
22 you were asked a question as to whether or
23 not you considered Thompson Hayward Chemical
24 Company a manufacturer of chemicals. And I
25 saw that you hesitated and struggled with

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01 JOHN MASAITIS

02 that question. Do you recall that?

03 A. Yes.

04 Q. All right. Now, in this

05 particular instance, with respect to U.S.

06 Steel, did you testify earlier that benzene

07 was made secondary to the manufacture of

08 coke?

09 A. Yes.

10 Q. Was coke used in connection

11 with the manufacture of steel?

12 A. Yes.

13 Q. Do you have an appreciation and

14 understanding that coke is made from

15 petroleum crude?

16 A. Coke is made from metallurgical

17 grade coal.

18 Q. Okay. So there was -- there

19 was a process through which U.S. Steel took

20 coal, created coke, and used that coke in the

21 manufacture of steel products?

22 A. Correct.

23 Q. As a by-product of making coke,

24 I believe you testified -- testified that

25 light oils were generated as a by-product?

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01 JOHN MASAITIS

02 A. Yes.

03 Q. And those light oils could be
04 broken down through another manufacturing
05 product into other hydrocarbons; correct?

06 A. Correct.

07 Q. I believe you mentioned
08 toluene, xylene and benzene.

09 A. Correct.

10 Q. And you've indicated that
11 through that manufacturing process the light
12 oils, at least at three different locations,
13 U.S. Steel was a manufacturer of benzene;
14 correct?

15 A. Yes.

16 Q. All right. Is it your
17 understanding, through review of the
18 materials for preparation of your deposition,
19 that what Thompson-Hayward Chemical Company
20 did in this case was that it blended raw
21 materials that had already been made by
22 manufacturers into a particular product for
23 Handschy?

24 A. Yes.

25 Q. You haven't seen any indication

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02 that Thompson-Hayward Chemical Company
03 engaged in the type of manufacturing process
04 that I have described, and you've testified
05 to, where you take a raw material, like coal,
06 break it down as a result of a by-product,
07 further break that down to make a particular
08 chemical? You've been given no indication
09 that Thompson-Hayward Chemical Company
10 engaged in that type of activity. True?

11 A. That's correct.

12 Q. Okay. But we do know that as a
13 manufacturer of benzene, xylene, toluene,
14 that as part of that process, when a company
15 sells that product out in the open market, it
16 will typically put together product data
17 sheets and Material Safety Data Sheets to
18 disclose the proper use of that product and
19 potential hazards of that product. Correct?

20 A. Typically manufacturers put
21 together a Material Safety Data Sheet for any
22 product that they manufacture.

23 Q. And part of the purpose of a
24 Material Safety Data Sheet is to tell the
25 customers who are going to use that product

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01 JOHN MASAITIS

02 how to properly use that product and what the
03 hazards of that product are. Correct?

04 A. A Material Safety Data Sheet is
05 a means of conveying information, health
06 hazard type, protective equipment,
07 flammability, spill procedures.

08 Q. Now, we've looked at several
09 Material Safety Data Sheets that were issued
10 by USS Chemicals for a product known as
11 benzene; correct?

12 A. We've looked at three.

13 Q. I believe we looked at the one
14 for 1971, the one for 1972, the one for 1979,
15 and then a fourth one we just looked at for
16 1982. Do you recall that, sir?

17 A. Yes.

18 Q. And we saw that, while there
19 were references to the MCA in '71, '72 and --

20 A. Excuse me. When I responded
21 yes, I responded yes to the fourth one that
22 you were describing. But, to my knowledge,
23 it was just '72, '79 and '82 that we looked
24 at.

25 Q. Okay. Fair enough. We looked

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01 JOHN MASAITIS

02 at a Material Safety Data Sheet from USS
03 Chemicals from 1972, '79 and then in 1982.

04 A. '82, yes.

05 Q. We looked at the one in the
06 seventies, and the seventies did not have a
07 specific warning on the Material Safety Data
08 Sheet that exposure to benzene could cause
09 cancer or leukemia. True?

10 A. That's correct.

11 Q. The one that we did see, the
12 one in 1982 had a very specific warning that
13 exposure to benzene may result in anemia or
14 at least one type of leukemia; correct?

15 A. Yes.

16 Q. And I ask that question about
17 one type of leukemia because it goes back to
18 the question that I had asked you earlier
19 about whether or not you have expertise as to
20 whether or not -- what types of leukemia may
21 or may not be caused or associated with
22 exposure to benzene. Again, that's beyond
23 your area of expertise?

24 A. Yes.

25 Q. With respect to this Material

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02 Safety Data Sheet in 1982, where it says
03 there may be a causal relationship with at
04 least one type of leukemia, do you know what
05 type of leukemia was being referenced in that
06 Material Safety Data Sheet?

07 A. No.

08 Q. I believe you testified earlier
09 that some time in the mid 1970s you were made
10 aware that benzene was a suspected carcinogen
11 and that there was -- there were members in
12 the scientific community who were looking
13 into that issue. Do you recall that
14 testimony?

15 A. Yes.

16 Q. You've also made it clear
17 through your prior testimony that there were
18 other individuals on the other side of that
19 issue, that -- scientists who were good
20 people, who were looking at the issue who
21 believed that there wasn't sufficient
22 evidence to conclude that exposure to benzene
23 could cause cancer or leukemia. True?

24 MR. DuPONT: Objection to form.

25 THE WITNESS: Correct.

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01 JOHN MASAITIS

02 BY MR. NEUER:

03 Q. We looked at the Material
04 Safety Data Sheets that U.S. Steel put
05 together. And it wasn't until 1982 that
06 there was a specific warning that indicated
07 that there could be an association. We just
08 discussed that; correct?

09 A. Yes.

10 Q. If during the 1970s you or
11 others at U.S. Steel believed that there was
12 sufficient evidence in the scientific
13 community to have an association or created a
14 link between exposure to benzene and certain
15 types of cancer, would that have been
16 included in the Material Safety Data Sheet?

17 MR. DuPONT: Objection to form.

18 THE WITNESS: Yes.

19 BY MR. NEUER:

20 Q. Certainly by 1982, United --
21 U.S. Steel and USS Chemicals came to the
22 conclusion that there was sufficient evidence
23 to include it in the Material Safety Data
24 Sheet. True?

25 A. Yes.

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01 JOHN MASAITIS

02 Q. And I believe you'd indicated
03 you're unaware of any earlier Material Safety
04 Data Sheet that would have given that
05 disclosure; correct?

06 A. Yes.

07 Q. Now, in your book of documents
08 that you prepared for your deposition, you
09 were given a letter that was written by the
10 State of Illinois to a company called
11 Handschy, that informed Handschy that benzene
12 was a suspected carcinogen. Do you recall
13 seeing that letter?

14 A. Yes.

15 Q. That was one of the things that
16 was provided to you in preparation for your
17 deposition here today; correct?

18 A. Yes.

19 Q. Now, with respect to what
20 Handschy did in response to that letter, you
21 don't have any information about that because
22 you weren't given any of the depositions that
23 were taken of the corporate representative or
24 representatives of Handschy; correct?

25 A. I think in the material there

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02 was a letter from Handschy back to the
03 Department of Illinois stating what they were
04 going to do.

05 Q. With respect to anything else
06 that they would have done in terms of taking
07 benzene out of all of their products or some
08 of their products, you're unaware of that.
09 True?

10 A. Yes.

11 Q. Okay. But what we have here in
12 terms of the evidence that's before you is,
13 we know that you were aware that benzene was
14 a suspected carcinogen in the mid-seventies.
15 And we know that Handschy was told that
16 benzene was a suspected carcinogen in
17 approximately 1967. True?

18 A. Yes.

19 Q. But we also know, to be fair to
20 everyone, that the issue about whether or not
21 benzene was, in fact, a carcinogen that could
22 have caused certain types of leukemia was an
23 issue that was being debated through the mid
24 to late 1970s; correct?

25 MR. DuPONT: Objection to form.

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01 JOHN MASAITIS

02 THE WITNESS: Yes.

03 BY MR. NEUER:

04 Q. We've seen -- we've discussed
05 the fact that in 1977 OSHA had an emergency
06 standard that reduced the level at which --
07 people were allowed to be exposed to benzene
08 in the workplace. We've talked about that,
09 have we not?

10 A. Yes.

11 Q. And that standard went from 10
12 parts per million down to one part per
13 million; correct?

14 A. The emergency temporary
15 standard, yes.

16 Q. And we also know through your
17 prior testimony that that standard was
18 actually challenged by certain trade
19 associations that took the position that the
20 evidence upon which OSHA made that decision
21 wasn't sufficient to actually change the
22 standard; correct?

23 A. Correct.

24 MR. DuPONT: Objection to form.

25 BY MR. NEUER:

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02 Q. That was the position that was
03 taken by some trade associations and other
04 scientists in the community; correct?

05 A. Yes.

06 MR. DuPONT: Objection to form.

07 BY MR. NEUER:

08 Q. Now, you know that there were
09 good people on both sides of that debate,
10 were there not?

11 A. Yes.

12 MR. DuPONT: Objection to form.

13 BY MR. NEUER:

14 Q. There was simply a disagreement
15 in the scientific community as to what the
16 state of the art was in the late 1970s.
17 True?

18 MR. DuPONT: Objection to form.

19 THE WITNESS: That's correct.

20 BY MR. NEUER:

21 Q. As far as what -- you were
22 asked some questions about what information
23 was actually provided to OSHA in order to
24 have OSHA take its position that the standard
25 should be lowered. Have you actually gone

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02 back and looked at what epidemiological
03 studies, or what particular studies OSHA was
04 relying on when it changed the standard?

05 A. No.

06 Q. Because I believe you were
07 asked some questions about whether or not
08 that literature definitively established a
09 link between benzene exposure and development
10 of cancer or certain types of leukemia. You
11 really don't know to what extent that
12 literature actually created a link or argued
13 that there was a link. True?

14 A. I don't recall.

15 Q. Were you part of the team that
16 decided in 1982 to include a warning that
17 exposure to benzene could result in anemia or
18 at least one type of leukemia?

19 A. I don't recall participating in
20 putting that Material Safety Data Sheet
21 together.

22 Q. Who were the individuals within
23 U.S. Steel who made that decision, do you
24 know?

25 A. I can't say for sure. It could

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02 have been a joint effort.

03 Q. As you sit here today, do you
04 know that there is still a debate in the
05 medical and scientific community as to what
06 levels of exposure of benzene can actually
07 cause disease?

08 MR. DuPONT: Objection to form.

09 THE WITNESS: I haven't given it
10 much thought through the last couple
11 days. I'm sure that there is some
12 debate.

13 BY MR. NEUER:

14 Q. As you sit here today, do you
15 know that there is a debate as to whether or
16 not exposure to benzene can even cause
17 certain types of leukemia? Do you know if
18 that debate currently exists?

19 A. I'm not aware of it, no.

20 Q. All right. Sir, those are all
21 the questions I have. I want to thank you
22 for your time.

23 VIDEO TECHNICIAN: The time is
24 1:37, we're now off the record.

25 - - -

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01 JOHN MASAITIS
02 (Discussion held off the
03 record.)
04 - - -
05 VIDEO TECHNICIAN: We're now
06 back on the record, the time is 1:38.

07 BY MR. REILLY:

08 Q. Mr. Masaitis, Jim Riley for
09 Radiator Specialty Company. And I want to
10 address probably three brief questions
11 pertaining to Exhibit 18, the safety data
12 sheet for raffinate. My first question, am I
13 correct or not that U.S. Steel sold raffinate
14 to its customers in thousands of gallons?

15 A. Yes.

16 Q. Am I correct or not that
17 raffinate, in thousands of gallons, was
18 shipped to its customers by tank cars?

19 A. Correct.

20 Q. And pertaining again to the
21 Safety Data Sheet for raffinate, does that
22 Safety Data Sheet on page five talk about the
23 cleaning procedures for the tank cars for the
24 thousands of gallons of raffinate that would
25 have been shipped to its customers?

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01 JOHN MASAITIS

02 (A.) (Yes.)

03 Q. That's all the questions I
04 have, sir. Thank you very much.

05 VIDEO TECHNICIAN: Off the
06 record.

07 - - -

08 (Discussion held off the
09 record.)

10 - - -

11 VIDEO TECHNICIAN: We're now
12 back on the record.

13 BY MR. DuPONT:

14 Q. Mr. Masaitis, Mr. Neuer asked
15 you questions regarding trade organizations
16 that -- or trade associations that fought
17 OSHA's determination in 1977 to list benzene
18 as a carcinogen and lower the permissible
19 exposure level.

20 MR. CAIRONE: Object to the
21 form.

22 BY MR. DuPONT:

23 Q. Do you recall that?

24 MR. CAIRONE: Object to the
25 form. I don't think he ever said

Objection:
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01 JOHN MASAITIS

02 fought.

03 BY MR. DuPONT:

04 Q. They disputed OSHA's
05 determination.

06 A. Yes, I recall that line of
07 questioning.

08 Q. All right. And he used the
09 words trade associations. And, to be fair,
10 let's talk about who those trade associations
11 were. They were the American Petroleum
12 Institute; correct?

13 A. Well, actually they're referred
14 to as industrial associations.

15 Q. Industrial associations; right?

16 A. Yes.

17 Q. The American Petroleum
18 Institute; correct?

19 A. Yes.

20 Q. The Manufacturing Chemists
21 Association; correct?

22 A. Yes.

23 Q. The American Iron and Steel
24 Industry; correct?

25 A. No.

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02 Q. No?

03 A. No.

04 Q. Okay. Well, we know at least
05 the Manufacturing Chemists Association and
06 the American Petroleum Institute.

07 A. I was going to correct you
08 before. It's the American Iron and Steel
09 Institute.

10 Q. Institute. Thank you for
11 correcting that, I appreciate it. But you
12 know who I've been talking about; correct?

13 A. (No response.)

14 Q. Okay. Sir, when I referred to
15 the American Iron and Steel Institute --
16 excuse me, when I referred to the American
17 Iron and Steel Industry, did you understand
18 that I was talking about the American Iron
19 and Steel Institute?

20 A. I sort of figured you were.

21 Q. Thank you.

22 All right. So these were the
23 trade associations that were fighting and
24 disputing OSHA's determination to lower the
25 permissible exposure limit; the American

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01 JOHN MASAITIS

02 Petroleum Institute and the Manufacturing
03 Chemists Association; correct?

04 MR. SYKES: Object to the form.

05 THE WITNESS: I -- the
06 organizations were participating in
07 the rule making process to establish
08 regulations pertaining to benzene. I
09 don't think I would use the term
10 fighting it.

11 BY MR. DuPONT:

12 Q. Okay. All right. These were
13 organizations that represented companies that
14 manufactured and sold benzene; correct?

15 A. Yes.

16 Q. And part of the issue in the
17 rule making process, as you're aware, was
18 that it was going to cost these companies
19 that made and sold benzene a significant
20 amount of money if the exposure levels were
21 lower than 10 to one part per million;
22 correct?

23 A. It was going to cost them a
24 significant amount of money, but that wasn't
25 the only reason why they participated in the

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02 rule making and challenging the standard.

03 Q. One of the issues was that it
04 was going to cost them a lot of money to
05 comply with the new standard; correct?

06 A. Yes.

07 Q. Now, U.S. Steel, United States
08 Steel Company, has dealt with issues in the
09 past, well before 1977, concerning the
10 classification of chemicals as carcinogens.
11 Is that correct?

12 A. Can you repeat that?

13 Q. Sure. Has U.S. Steel, in fact,
14 prior to 1977, dealt with the issue of
15 classifying chemicals as carcinogens?

16 MR. CAIRONE: Object to the
17 form.

18 THE WITNESS: I would say it's
19 possible, but here again, as I sit
20 here today, thinking about dates and
21 what other procedures we were involved
22 in, I can't say for sure. I just --
23 specific dates.

24 BY MR. DuPONT:

25 Q. A few more questions.

Objection:
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02 I hand you a document that was
03 produced to us in the course of discovery.
04 It's Bates Number USS 16982. This is a
05 letter from the Director, Coal Chemicals
06 Sales Division at United States Steel Company
07 to Mr. E.C. Myers, the Assistant to the Vice
08 President, Industrial Relations of the United
09 States Steel Company. Is that correct?

10 A. Yes.

11 Q. And this letter is dated
12 November 13th of 1952; is that correct?

13 A. Yes.

14 Q. And at this point in time, in
15 review of the records, there is an issue as
16 to whether coal tar should be classified as a
17 carcinogen; is that correct?

18 A. Yes.

19 Q. Now, in fact, the letter in the
20 first paragraph says, from the Director of
21 the Coal Chemical Sales Division to the
22 Assistant Vice President of Industrial
23 Relations at United States Steel Company, it
24 says, "In our conversation the other day we
25 discussed a letter to you from Tom Kinsella,

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02 president of Barrett, regarding the
03 industrial cancer hazard of coal tar and its
04 products." Did I read that correctly?

05 A. Yes.

06 Q. Can you go to the last full
07 paragraph of this document and read the first
08 sentence of that paragraph into the record,
09 the one that starts with, "The public health
10 services."

11 A. It says, "The public health
12 services requirements on the use and labeling
13 of benzol has had a direct effect on the sale
14 of this product."

15 Q. And benzol is synonymous for
16 benzene, is it not?

17 A. Yes.

18 Q. Thank you.

19 - - -

20 MR. NEUER: I forgot to ask him
21 something about the '71/'72 Material
22 Safety Data Sheet.

23 (Discussion held off the
24 record.)

25 BY MR. NEUER:

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01 JOHN MASAITIS

02 Q. Sir, you're looking at what's
03 been previously marked Exhibit 3 to your
04 deposition. And this is the Material Safety
05 Data Sheet that you looked at earlier, that I
06 believe up in the lefthand corner is dated
07 1971. Do you see that, sir?

08 A. Yes.

09 Q. I forgot to ask you about this.
10 Again, I'm the lawyer who represents T H
11 Agriculture and Nutrition. Do you see that
12 this is a Material Safety Data Sheet that was
13 issued by USS Chemicals?

14 A. Correct.

15 Q. As the manufacturer of the
16 product that's identified as benzene, benzol.
17 Do you see that?

18 A. Yes.

19 Q. Do you see also that it has a
20 stamp on it that says, Thompson-Hayward
21 Chemical Company in the righthand corner?

22 A. Yes.

23 Q. And have you been made aware,
24 sir, through your preparation of this
25 deposition, that the Bates label number down

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02 at the bottom of that exhibit says, HD
03 000649, and that's an indication that it was
04 actually filed in the files of Handschy?

05 A. Correct.

06 Q. It is correct that this is the
07 way the system was supposed to work. A
08 manufacturer, if they provided a Material
09 Safety Data Sheet to a distributor, it was
10 expected the distributor would then forward
11 that Material Safety Data Sheet on to the end
12 user; correct?

13 A. Yes.

14 Q. So this is an indication that
15 the system worked as it was designed to work,
16 and that Thompson-Hayward Chemical Company
17 did what you would expect a reasonably
18 prudent distributor to do. True?

19 A. Yes.

20 Q. Those are all the questions
21 that I have. Thank you, sir.

22 - - -

23 MR. SYKES: Mr. Masaitis will
24 reserve and exercise his right to
25 review the transcript.

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01 JOHN MASAITIS
02 VIDEO TECHNICIAN: The time is
03 1:47. This concludes today's
04 deposition.

05 - - -
06 (Whereupon the document was
07 marked, for identification purposes,
08 as Masaitis Exhibit Number 19.)

09 - - -
10 (Witness excused.)

11 - - -
12 (Deposition concluded at 1:47
13 p.m.)

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01 JOHN MASAITIS
02 C E R T I F I C A T E
03
04 COMMONWEALTH OF PENNSYLVANIA:
05
06 COUNTY OF PHILADELPHIA:
07
08 I, Brigitte A. Strain, a Notary Public
09 within and for the County and State
10 aforesaid, do hereby certify that the
11 foregoing deposition of JOHN B. MASAITIS, was
12 taken before me, pursuant to notice, at the
13 time and place indicated; that said deponent
14 was by me duly sworn to tell the truth, the
15 whole truth, and nothing but the truth; that
16 the testimony of said deponent was correctly
17 recorded in machine shorthand by me and
18 thereafter transcribed under my supervision
19 with computer-aided transcription; that the
20 deposition is a true record of the testimony
21 given by the witness; and that I am neither
22 of counsel nor kin to any party in said
23 action, nor interested in the outcome
24 thereof.

25 WITNESS my hand and official seal this
26 26th day of November, 2010.

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Brigitte A. Strain, RPR, CLR

Notary Public

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02 INSTRUCTIONS TO WITNESS

03

04 Please read your deposition over

05 carefully and make any necessary corrections.

06 You should state the reason in the

07 appropriate space on the errata sheet for any

08 corrections that are made.

09 After doing so, please sign the errata

10 sheet and date it.

11 You are signing same subject to the

12 changes you have noted on the errata sheet,

13 which will be attached to your deposition.

14 It is imperative that you return the

15 original errata sheet to the deposing

16 attorney within thirty (30) days of receipt

17 of the deposition transcript by you. If you

18 fail to do so, the deposition transcript may

19 be deemed to be accurate and may be used in

20 court.

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01 JOHN MASAITIS

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01 JOHN MASAITIS

02

03 ACKNOWLEDGMENT OF DEPONENT

04 I, _____, do

05 hereby certify that I have read the foregoing

06 pages __ to __ and that the same is a

07 correct transcription of the answers given by

08 me to the questions therein propounded,

09 except for the corrections or changes in form

10 or substance, if any, noted in the attached

11 Errata Sheet.

12

13

14 DATE

SIGNATURE

15

16 Subscribed and sworn to before

17 me this

18 _____ day of _____, 2010.

19

20 My commission expires:

21

22

23

24 Notary Public

25 156757

Transcript of Masaitis, John

Saturday, August 15, 2020

Masaitis, John

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Transcript of Masaitis, John

Saturday, August 15, 2020

Exhibit 5

Transcript Report

Masaitis, John

Plaintiffs objections in yellow

US Steel counter objections in green

Transcript of Masaitis, John

Full Transcript Report

Designation Legend

MASAITIS, JOHN P - (KREN) 12/21/11

Transcript of Masaitis, John

Masaitis, John

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Page 1

01 IN THE COURT OF COMMON PLEAS
02 OF PHILADELPHIA COUNTY, PENNSYLVANIA
03 CIVIL DIVISION
04 - - -
05 SONDRA KREM, Individually : SEPT. TERM, 2010
06 And as Executrix of the :
07 Estate of JOSEPH KREM : NO. 001913
08 Plaintiff :
09 :
10 vs. :
11 :
12 BP CORPORATION NORTH :
13 AMERICA, INC., et al., :
14 Defendants. :
15
16 - - -
17 Wednesday, December 21, 2011
18 - - -
19
20 Videotaped Deposition of JOHN P.
21 MASAITIS, taken at the Hilton Daytona Beach
22 Ocean Walk Village in the Executive Conference
23 Room B, 100 North Atlantic, Daytona Beach,
24 Florida, commencing at 9:17 a.m., before
25 Brigitte A. Strain, a Federally Approved
26 Registered Professional Reporter and Notary
27 Public.
28
29 - - -
30
31
32 VERITEXT NATIONAL COURT REPORTING COMPANY
33 MID-ATLANTIC REGION
34 1801 Market Street - Suite 1800
35 Philadelphia, Pennsylvania 19103

Transcript of Masaitis, John

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Page 2

01 A P P E A R A N C E S :

02

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09 Adupont@lockslaw.com

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11 (Florida)

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15 YOUNG, P.C.

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22 Representing the Defendant, CRC

23 Industries, Inc., Pep Boys

24 (Via Mobile Depo)

25

26

27 COATS ROSE

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30 Houston, Texas 77046

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32 Jriley@coatsrose.com

33 Representing Radiator Specialty

34 Company

35 (Florida)

36

37

38

39

40

41

Transcript of Masaitis, John

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Page 3

01 APPEARANCES (continued):

02

03 FORMAN PERRY WATKINS KRUTZ & TARDY

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36

37

38

39

Transcript of Masaitis, John

Masaitis, John

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Page 4

01 APPEARANCES (continued):

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03 JONES CARR McGOLDRICK

04 BY: CHRISTOPHER W. CARR, ESQUIRE

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10 Chris.Carr@JCMFirm.com

11 Representing the Defendant, Safety-Kleen

12 Systems, Inc.

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16 BY: CARRIE E. KEEHNER, ESQUIRE

17 1201 North Market Street, Suite 900

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19 (302) 425-5177

20 CEK@maronmarvel.com

21 Representing the Defendants, BP

22 Corporation North America

23 and Atlantic-Richfield Company

24 (Via Teleconference)

25

26

27 A L S O P R E S E N T:

28 Clay McMillan, Video Technician

29

30

31

32

33

34

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36

37

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01 I N D E X

02 - - -

03

04 TESTIMONY OF: JOHN P. MASAITIS

05

06 By Mr. DuPont.....11, 113

07 By Mr. Riley.....98, 121

08 By Mr. Sykes.....104, 123

09

10 - - -

11

12 E X H I B I T S

13

14 - - -

15

16 EXHIBIT NUMBER DESCRIPTION PAGE MARKED

17

18 Masaitis-1 Deposition Materials 11

19

20 Masaitis-2 Occupational Medicine

21 And Industrial Hygiene

22 USS 2884-2904 21

23

24 Masaitis-3 Minutes of Meeting

25 5/21/53 USS 16958-80 49

26 Masaitis-4 Letter, Cancer Mortality

27 USS 16956-57 54

28

29 Masaitis-5 Potential Toxic Gas Hazards

30 In Coal Chemical Operations

31 USS 16905-51 60

32

33 Masaitis-6 Alleged Benzoin Poisoning

34 Case USS 03891-96 67

35 Masaitis-7 Periodic Occupational

36 Examinations

37 USS 03902-912 71

38 Masaitis-8 Handbook of Organic

39 Industrial Solvents

40 USS 2905-2907 73

41

42

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01	EXHIBITS (continued):		
02	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED
03			
04	Masaitis-9	Dangerous Properties	
05		Of Industrial Materials	82
06	Masaitis-10	Industrial Toxicology	
07		USS 2911-2916	88
08			
09	Masaitis-11	Safety Data Sheet for	
10		Raffinate USS 16-22	105
11	Masaitis-12	Letter from Souder	
12		USS 15	111
13			
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Transcript of Masaitis, John

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01 DEPOSITION SUPPORT INDEX
02 INSTRUCTION NOT TO ANSWER:
03 Page Line
04 (None)
05
06 REQUEST FOR PRODUCTION OF DOCUMENTS:
07 Page Line
08 (None)
09
10 STIPULATIONS:
11
12 Page Line
13
14 10 14
15
16 QUESTIONS MARKED:
17 Page Line
18 (None)
19
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21
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23
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28

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01 JOHN P. MASAITIS
02 VIDEO TECHNICIAN: We're going
03 on the record at 9:15 a.m. Eastern
04 time. My name is Clay McMillan of
05 Veritext Reporting.
06 Today's date is Wednesday,
07 December the 21st, 2011.
08 This deposition is being held at
09 the Hilton Daytona Beach Ocean Walk
10 Village in the Executive Conference
11 Room B. The address is 100 North
12 Atlantic Avenue, Daytona Beach,
13 Florida.
14 The caption of this case is
15 Sondra Krem, Executrix of the Estate
16 of Joseph Krem versus B.P. Corporation
17 North America, Inc., et al. This case
18 has been filed in the Common Pleas
19 (sic) of Philadelphia County, Civil
20 Division, Docket Number 1913,
21 September Term of 2010.
22 The name of the witness this
23 morning is Mr. John Masaitis.
24 At this time would the attorneys
25 please identify yourselves for the

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Masaitis, John

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01 JOHN P. MASAITIS
02 record and the parties you represent,
03 after which our court reporter,
04 Brigitte Strain of Veritext Reporting,
05 will swear the witness in and we can
06 proceed.

07 MR. DuPONT: This is Andrew
08 DuPont from the Locks Law Firm for the
09 Estate of Joseph Krem and Sondra Krem.

10 MR. SYKES: Phillip Sykes for
11 United States Steel Corporation and
12 the witness.

13 MS. SMITH: Lee Ann Smith,
14 United States Steel Corporation and
15 the witness.

16 MR. CARR: Chris Carr for
17 Safety-Kleen.

18 MR. RILEY: Jim Riley for
19 Radiator Specialty Company.

20 VIDEO TECHNICIAN: And those
21 present on video conference or audio
22 conference?

23 MR. FALLS: This is John Falls
24 in Philadelphia on behalf of CRC
25 Industries and also on behalf of Pep

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01 JOHN P. MASAITIS
02 Boys. We'll be doing a substitution
03 of attorneys within the next couple of
04 days for the representation of Pep
05 Boys.

06 MS. KEEHNER: This is Carrie
07 Keehner for Atlantic Richfield
08 Company, BP Products North America,
09 Inc., and BP Corporation, North
10 America, Inc.

11 VIDEO TECHNICIAN: Court
12 Reporter, would you please swear in
13 the witness.

14 - - -
15 (It is hereby stipulated and
16 agreed by and among counsel for the
17 respective parties that all
18 objections, except as to the form of
19 the question, be reserved until the
20 time of trial and that an objection by
21 one defendant inures to the benefit of
22 all defendants.)

23 - - -
24 JOHN P. MASAITIS, after having
25 been first duly sworn, was examined

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01 JOHN P. MASAITIS

02 and testified as follows:

03 - - -

04 EXAMINATION

05 - - -

06 BY MR. DuPONT:

07 Q. Good morning, Mr. Masaitis.

08 A. Good morning.

09 Q. My name is Andrew DuPont. You

10 and I have actually met before at a prior

11 deposition. We're here to take your

12 deposition in the case of Joseph Krem who

13 contracted and passed away from

14 myelodysplastic syndrome and acute

15 myelogenous leukemia. Have you given a

16 deposition or testified in any other matter

17 since November of 2010?

18 A. Not that I recall.

19 Q. I understand that you have been

20 provided by your counsel with a series of

21 documents to review in preparation for your

22 deposition; is that correct?

23 A. Yes.

24 - - -

25 (Whereupon the document was

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01 JOHN P. MASAITIS
02 marked, for identification purposes,
03 as Masaitis Exhibit Number 1.)

04 - - -

05 BY MR. DuPONT:

06 Q. I've been handed a list of
07 those documents that were provided to you
08 that has been marked as Exhibit Masaitis 1.
09 I would like to hand that to you and just ask
10 you to confirm if that, in fact, accurately
11 represents the documents that you reviewed
12 and prepared for your deposition?

13 A. Yes.

14 Q. Now, were those documents that
15 you requested U.S. Steel provide to you?

16 A. No. These were documents that
17 the attorneys representing U.S. Steel sent to
18 me to review in preparation.

19 Q. And you understand that you're
20 testifying here today on behalf of U.S. Steel
21 Corporation?

22 A. Yes.

23 Q. And you have testified in the
24 past as a corporate representative of U.S.
25 Steel, also known as United States Steel

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01 JOHN P. MASAITIS

02 Corporation, on a number of occasions?

03 A. Yes.

04 Q. And you do that in a consulting
05 fashion? In other words, you're no longer
06 employed by United States Steel Corporation,
07 you're paid on an hourly basis to testify for
08 United States Steel Corporation to provide
09 litigation support services?

10 A. I act as a consultant for cases
11 of this type. I do not charge for the time
12 that I spend testifying at a deposition or in
13 court, but I do charge for preparing for the
14 case.

15 Q. And your charges for preparing
16 for the case, you last told me in
17 November 2010, I believe were \$300 an hour?

18 A. Yes.

19 Q. Is that still the case or has
20 that changed?

21 A. No, that's the case.

22 Q. Several of the documents
23 included in the documents provided to you by
24 the lawyers for United States Steel are
25 transcripts of the deposition of Joseph Krem.

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS
02 Did you read those transcripts?
03 A. Yes, I did.
04 Q. Did you take any notes?
05 A. Mental notes.
06 Q. When did you receive the
07 documents that were sent to you by the
08 lawyers for United States Steel?
09 A. I received the first group
10 three weeks ago, and then the second part
11 about a week, week and a half ago.
12 Q. What was the first group?
13 A. If I'm not mistaken, it was
14 this packet. And also this packet.
15 Q. Okay. Let's see if we can
16 divide those up. When you say the packet to
17 your righthand side --
18 A. I believe these were the first
19 ones that were sent -- excuse me, three weeks
20 ago. And this about a week, week and a half
21 ago, if I'm not mistaken.
22 Q. All right. So you're holding
23 what is a copy of your deposition in the
24 Ronald Davis case, dated November 9, 2010,
25 which I'm handing back to you. And this

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01 JOHN P. MASAITIS

02 document was sent to you about a week, week
03 and a half ago?

04 A. Something like that, yes.

05 Q. And then all the other
06 documents that are on your list were sent to
07 you about three weeks ago?

08 A. Roughly.

09 Q. Okay. From your review of the
10 transcript of the deposition of Joseph Krem,
11 what is your understanding as to the products
12 -- the identity of the products that Mr. Krem
13 was exposed to?

14 A. From the depositions he talked
15 about working with gasoline and various
16 materials used for cleaning brakes. He
17 talked about working with penetrating oils
18 like Liquid Wrench. Typically what you find
19 in a gas station of that type.

20 Q. Sir, would you agree with me,
21 based on your review of the deposition, that
22 when Mr. Krem worked with the Liquid Wrench
23 product, at least from the early 1950s until
24 the 1978 time period, he would have been
25 exposed to benzene from using that product?

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Page 16

01 JOHN P. MASAITIS
02 MR. SYKES: Object to the form
03 of the question.
04 MR. RILEY: Same objection.
05 THE WITNESS: If there was
06 benzene in the Liquid Wrench, I would
07 assume that when he sprayed a couple
08 of drops, as he described, from the
09 plunger type oil can that he put the
10 Liquid Wrench in, there was a minimum
11 exposure.
12 BY MR. DuPONT:
13 Q. Well, you would agree with me
14 though that when using the Liquid Wrench
15 product Mr. Krem was exposed to benzene?
16 A. As I described.
17 MR. SYKES: Objection to the
18 form of the question.
19 BY MR. DuPONT:
20 Q. And you would agree with me
21 also that when Mr. Krem used the Liquid
22 Wrench product, he would have been exposed to
23 benzene when the Liquid Wrench came into
24 contact with his skin; correct?
25 MR. SYKES: Object to the form

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01 JOHN P. MASAITIS
02 of the question.
03 MR. RILEY: Object to the form.
04 THE WITNESS: If you want to
05 assume that he got the Liquid Wrench
06 on his hand, yes. But does he
07 describe that he administered the
08 Liquid Wrench from a plunger type oil
09 can which has a long spout on it? I
10 don't think that he would get any on
11 his hand applying it with that type of
12 a device.
13 BY MR. DuPONT:
14 Q. Did you say that --
15 MR. CARR: May we have an
16 agreement that one defendant's
17 objection works for all.
18 MR. DuPONT: Yes.
19 MR. CARR: Thanks.
20 BY MR. DuPONT:
21 Q. Nonetheless, if his skin did
22 come into contact with Liquid Wrench, Mr.
23 Krem would have been exposed to benzene from
24 the Liquid Wrench?
25 MR. SYKES: Object to the form

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01 JOHN P. MASAITIS

02 of the question.

03 MR. RILEY: Same objection.

04 THE WITNESS: There would have
05 been a minimum exposure. But also in
06 his deposition he talked about
07 carrying around rags, I believe, in
08 his back pocket. And that if he got
09 anything on his hands, he would wipe
10 them off immediately.

11 BY MR. DuPONT:

12 Q. How much benzene was Mr. Krem
13 exposed to from working with Liquid Wrench,
14 do you know that specifically?

15 A. No, I do not.

16 Q. Did you test -- excuse me,
17 strike that.

18 Did you see testimony regarding
19 Mr. Krem's use of a product called
20 Safety-Kleen?

21 A. Yes.

22 Q. Do you know if there's benzene
23 in Safety-Kleen during the time periods that
24 Mr. Krem used the product?

25 MR. CARR: Objection calls for

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01 JOHN P. MASAITIS

02 speculation, lack of foundation.

03 THE WITNESS: I have no idea if
04 there is or not.

05 BY MR. DuPONT:

06 Q. Do you know if there was
07 benzene in any of the brake cleaning products
08 that Mr. Krem used during the time period
09 that he used them?

10 MR. FALLS: Objection to form,
11 calls for speculation. Lack of
12 foundation.

13 THE WITNESS: I don't think in
14 his deposition there was any
15 description of the contents of any of
16 the materials that he worked with. I
17 guess I have no reason from his
18 deposition to think that there was any
19 benzene in any of the brake cleaning
20 products. There could have been, but
21 I have no reason to say there was or
22 there wasn't.

23 BY MR. DuPONT:

24 Q. Okay. Have you observed
25 automotive mechanics at work in the past?

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS

02 A. Would you repeat that?

03 Q. Sure. Have you watched auto
04 mechanics work in a professional context in
05 the past?

06 A. Yes, I have. And I do quite a
07 bit of automotive work myself since I was
08 16 years old.

09 Q. Have you been to any of the
10 work sites that Mr. Krem worked at?

11 A. No, but I'm familiar with them.
12 I've driven by them, being from that area.

13 Q. Did you go to any of those work
14 sites and look inside any of the buildings?

15 A. No.

16 Q. Have you spoken with any
17 doctors or industrial hygienists or
18 toxicologists that have been hired by United
19 States Steel in conjunction with this
20 litigation?

21 A. No.

22 Q. Do you, other than the
23 documents that you've brought to your
24 deposition here today, have any United States
25 Steel Corporation documents at your house?

Transcript of Masaitis, John

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01 JOHN P. MASAITIS

02 A. I may have some. I was
03 preparing for another case that was -- a
04 deposition that was to be taken in November.
05 I may still have that material there. I may
06 have something, but as a rule I don't keep
07 it.

08 Q. Other than materials that are
09 provided to you by United States Steel for
10 the purpose of preparing for depositions, do
11 you have any documents or other materials
12 that you maintain from the time you were
13 employed by United States Steel?

14 A. No, I can't think of any.

15 Q. I would like to talk to you
16 about some documents that have been provided
17 to us from United States Steel's records in
18 response to discovery requests we served in
19 this case, the first of which I'll mark as
20 Exhibit 2. And, for the record, it's USS
21 2884 through 2904.

22 - - -

23 (Whereupon the document was
24 marked, for identification purposes,
25 as Masaitis Exhibit Number 2.)

Obj:
802

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01 JOHN P. MASAITIS

02 - - -

03 BY MR. DuPONT:

04 Q. While you're looking through
05 this, am I correct that this is a 1948
06 publication, at least one chapter from the
07 publication of the book, "Occupational
08 Medicine and Industrial Hygiene" by
09 Rutherford T. Johnstone?

10 A. Yes.

11 Q. And this would have been a
12 document that was kept in United States
13 Steel's medical or industrial hygiene
14 records?

15 A. I've never seen this document
16 before and I'm not familiar with it. Maybe
17 the medical doctors, they may have subscribed
18 to it or had it in their library. But we
19 didn't in industrial hygiene, that I recall.

20 Q. Are you familiar with this
21 publication being a standard in Occupational
22 Medicine and Industrial Hygiene publication?

23 A. No. No, I'm not.

24 Q. Sir, you'd agree with me that
25 individuals working with a product that

Obj:
802
602
All lines
on page

0

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01 JOHN P. MASAITIS

02 contains benzene should have been advised
03 that the product contained benzene, am I
04 correct?

05 A. It's always been our practice
06 to provide as much information to the people
07 we were selling material to as we thought
08 would be beneficial to them. If we sold
09 material that was toxic, to the extent that
10 it could cause severe or occupational
11 disease, we typically let our customers know
12 that.

13 Q. Benzene, in fact, was a toxic
14 chemical, there's no question about that?

15 A. Yes.

16 Q. And that's something that was
17 known by U.S. Steel since the early 1950s and
18 even before?

19 A. Yes. And I believe that we
20 advised our customers that materials
21 contained benzene.

22 Q. And you would agree with me
23 that the individual working in a mechanic
24 shop, such as Mr. Krem, should have been
25 advised not only that benzene was in a

MASAITIS, JOHN
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01 JOHN P. MASAITIS
02 product, but that the product could,
03 therefore, cause an individual severe harm to
04 their health; correct?

05 MR. FALLS: Objection to form.

06 MR. RILEY: Object to form.

07 MR. SYKES: Object to form.

08 THE WITNESS: Well, I believed
09 that could be answered several ways.
10 I mean, I believe so far as the
11 products that we're talking about in
12 this case, the Federal Hazardous
13 Substance Labeling Act controlled
14 pretty much what had to be put on the
15 containers of materials like Liquid
16 Wrench.

17 MR. DuPONT: Objection, move to
18 strike.

19 BY MR. DuPONT:

20 Q. Sir, would you agree with me,
21 based on United States Steel's knowledge,
22 that benzene was a toxic substance capable of
23 causing severe occupational illnesses, that
24 users of a product containing benzene should
25 have been warned that the product contained

611, non-responsive

0

Transcript of Masaitis, John

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Page 25

01 JOHN P. MASAITIS

02 benzene and that the product could cause
03 severe occupational illness?

611, non-responsive

04 MR. FALLS: Object to the form
05 of the question.

06 MR. SYKES: Objection to the
07 form of the question.

08 MR. RILEY: Objection to form
09 and foundation.

10 THE WITNESS: I believe that the
11 manufacturer has responsibility to
12 inform customers what the contents of
13 the material that the solvent is
14 comprised of, but I also believe that
15 the consequences of exposure to the
16 same material is due to the particular
17 dose that an individual receives. In
18 other words, you could work with a
19 material your entire work life and not
20 contract any occupational disease from
21 it utilizing the proper control
22 measures. So it's all based upon the
23 dose that an individual receives and
24 the control.

25 In many situations, you can't

611, non-responsive
403, waste of time

Transcript of Masaitis, John

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01 JOHN P. MASAITIS

02 anticipate how a material is going to
03 be used by each and every individual.

04 BY MR. DuPONT:

05 Q. And if you can't anticipate how
06 a material is going to be used by an
07 individual, isn't it just better to take out
08 the hazard that could cause one?

09 A. Well, I think benzene is
10 probably one of the top ten materials --
11 chemicals utilized in the world today. If we
12 took benzene out of all materials that it's
13 contained in, our society would be vastly
14 different.)

15 Q. So you're not saying that
16 benzene is one of the top ten materials used
17 in workplaces like mechanic shops or by
18 painters today, are you?

19 A. I'm saying that benzene is one
20 of the top ten materials used throughout the
21 world. Where specifically it's used, it's
22 used in various areas. Plastics, rubber,
23 dyes, pesticides.

24 Q. In manufacturing facilities to
25 make other products; correct?

611, non-responsive
403, waste of time

O

Transcript of Masaitis, John

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01 JOHN P. MASAITIS

02 A. In manufacturing facilities and
03 also products that get to the consumer.

04 Q. Are you saying that benzene is
05 one of the top ten products used by end
06 consumers today?

07 MR. SYKES: Objection to the
08 form of the question.

09 THE WITNESS: I'm not saying
10 that. I'm saying that benzene is used
11 to produce a lot of materials that are
12 in our society today and is one of the
13 top ten materials produced in the
14 world today. So that there are many,
15 many materials that we would be doing
16 without if benzene was not permitted
17 to be manufactured or taken out of the
18 manufacturing process.

19 BY MR. DuPONT:

20 Q. And benzene, in those uses, is
21 being used in chemical plants, refineries and
22 locations where there are strict controls as
23 to how benzene is contained and transported
24 and used so as to avoid people being exposed
25 to it; correct?

611, non-responsive



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02 A. Well, every employer, you know,
03 should have strict controls for the people
04 working for them so that they're not exposed
05 to concentrations of material in excess of
06 the permitted occupational exposure levels,
07 such as those promulgated by OSHA or, before
08 that, the threshold limit values of the
09 American Conference of Governmental
10 Industrial Hygienists. That's every
11 employer's responsibility.

611, non-responsive
704, ultimate issue
402/403 relevance

○

12 Q. Sir, my question to you: When
13 you're talking about how benzene is used
14 today, what you're referring to is benzene
15 used as a B-stock chemical in highly
16 controlled sophisticated operations to
17 manufacture and produce other chemicals;
18 correct?

19 A. Well, I, you know, I'm not
20 familiar with each and every process where
21 it's used. And, you know, as I've said,
22 benzene is a toxic material. And to minimize
23 exposure, since it has a very low permissible
24 exposure level, you have to have very rigid
25 control measures.

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01 JOHN P. MASAITIS

02 Q. Sir, would you agree with me
03 that an individual should have the right to
04 choose whether or not they want to work with
05 a product that has a highly toxic material in
06 it?

07 A. Right to choose. In other
08 words, I think, if you want to stay with the
09 Liquid Wrench, I mean, if they choose to
10 purchase the Liquid Wrench, they're making
11 that decision. If they choose to purchase a
12 brake cleaner, they're making that decision.
13 And the labels on the container, as I said,
14 are regulated by the Federal Hazardous
15 Substance Material Labeling Act.

16 Q. Sir, that wasn't my question.
17 My question was: Does an individual worker
18 in the workplace have the right to be able to
19 have, (a), the information to determine
20 whether or not a product contains a toxic
21 substance, and then, (b), decide whether or
22 not they want to work with that product based
23 on the information that they've been given
24 regarding the toxicity of that product?

25 A. Yes, I think they have that

611, non-responsive
704, ultimate issue
judge determines
the law that applies



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02 right.

03 Q. And if you don't advise a
04 person that a product contains a toxic
05 substance like benzene, then that person
06 can't make the decision whether or not they
07 want to use or not use the product because of
08 its toxic content?

09 MR. CARR: Objection.

10 MR. SYKES: Objection to the
11 form.

12 MR. RILEY: I object to the
13 form.

14 THE WITNESS: The employee
15 should be made aware of, excuse me,
16 the materials that he's working with.
17 And he should be educated on those
18 materials so that he has adequate
19 knowledge of his part in controlling
20 his exposures. His part in utilizing
21 the control measures that are
22 available, or his part of adequately
23 wearing a respirator. That sort of

24 thing. So, yes, it's necessary.

25 MR. DuPONT: Object and move to

611, non-responsive

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01 JOHN P. MASAITIS

02 strike.

03 BY MR. DuPONT:

04 Q. My question, sir, is, in order
05 for a person to make an informed decision
06 about whether they want to use a product that
07 contains a toxic substance, you have to first
08 tell that person that the product, (a),
09 contains a toxic substance and, (b), what the
10 toxicity of the products are; correct?

11 MR. CARR: Objection.

12 MR. SYKES: Objection.

13 MR. RILEY: Objection.

14 THE WITNESS: Well, yes, but in

15 industrial hygiene, for all intents
16 and purposes, we look at all materials
17 as being toxic. It's all based upon
18 dose.)

611, non-responsive

19 BY MR. DuPONT:

20 Q. All right. You're not saying
21 that all materials are toxic more than
22 benzene, are you?

23 A. I'm not saying they're more
24 toxic than benzene.

25 Q. They're not as toxic as

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02 benzene; correct?

03 A. I'm not saying that. Some are,
04 some are not. But all materials from an
05 industrial hygiene point of view to some
06 degree, depending upon the dose -- it's all
07 dose dependent -- are toxic.

08 Q. And not all materials cause
09 cancer, do they?

10 A. Not all materials, no.

11 Q. Benzene does cause cancer,
12 doesn't it?

13 A. Benzene is a known human
14 carcinogen, yes.

15 Q. Mr. Masaitis, did U.S. Steel
16 refine or otherwise make kerosene?

17 A. Not to my knowledge, no.

18 Q. If you were working in the
19 1970s at U.S. Steel, and you wanted to advise
20 somebody to use a solvent other than benzene
21 for purposes of cleaning materials or general
22 use as a solvent, what would you advise them
23 to use?

24 MR. SYKES: Object to the form
25 of the question.

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01 JOHN P. MASAITIS

02 THE WITNESS: What would we
03 advise our people?

04 BY MR. DuPONT:

05 Q. Sure.

06 MR. SYKES: Andrew, I think that
07 might be outside the scope of the
08 Notice. That calls for speculation
09 and I don't see how that's relevant to
10 what U.S. Steel's activity was in this
11 case, selling Raffinate to Radiator.

12 THE WITNESS: Typically what we
13 would do is, we would provide the
14 material to the worker based upon the
15 -- our knowledge as occupational
16 health professionals that this is the
17 least toxic of the materials possible
18 to do the job that they were doing.
19 And also instruct the employee through
20 safe job procedures as to how to
21 adequately use it.

22 So it -- here again, I think
23 that the employer makes the decision
24 and informs the employee. And if the
25 employee really objects to it, well,

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01 JOHN P. MASAITIS
02 I, you know, I don't know what can be
03 done at that point.
04 BY MR. DuPONT:
05 Q. Maybe my question wasn't clear.
06 What I'm asking, sir, is: If
07 an employee of U.S. Steel came to you in the
08 1960s and the 1970s -- I'll change the
09 question a little bit. If an employee of
10 U.S. Steel came to you in the 1960s and 1970s
11 and said, I'm using benzene as a solvent, I'm
12 using a solvent that contains five percent
13 benzene in it, is there a safer solvent that
14 I should be using? Is there a different
15 solvent that I should be using? What other
16 solvent would you recommend to them?
17 MR. RILEY: Object to form.
18 MR. SYKES: Objection to the
19 form of the question. Calls for
20 speculation. Outside the scope of the
21 Notice.
22 THE WITNESS: First -- the first
23 thing we would do is, we would
24 evaluate the specific material. In
25 other words, determine what the

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02 composition of the material was. And
03 if indeed it did contain benzene, what
04 was the percentage of benzene in the
05 product.

06 Then we would do a worker
07 exposure evaluation. We would spend
08 two or three days working with that
09 employee to find out what his exact
10 exposure was and compare it to the
11 criteria at the time that was
12 available to minimize any potential
13 for the occupational -- the worker
14 contracting an occupational disease.
15 If his exposure was outside of what
16 would be acceptable, we would look for
17 a suitable substitute. We would look
18 for the controls that could minimize
19 his exposure. We probably would
20 provide him with a respirator that
21 would reduce his exposure in the
22 interim until additional control
23 measures were put in.

24 Here again, this is all assuming
25 that his exposure was necessary. But

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01 JOHN P. MASAITIS
02 you can work with any material and not
03 really contract an excessive exposure.
04 BY MR. DuPONT:
05 Q. What solvent would you provide
06 to that worker, other than the one that
07 contained five percent benzene?
08 A. If --
09 MR. SYKES: Object to the form
10 of the question.
11 THE WITNESS: If there was a
12 suitable solvent available, then we
13 would choose one that was -- had the
14 lowest known toxicity.
15 BY MR. DuPONT:
16 Q. What are some examples?
17 A. Well, what are some examples of
18 how it's being used?
19 Q. Solvents to clean parts.
20 A. Solvents to clean parts?
21 Q. Yes.
22 A. Okay. Well, I don't think that
23 it would be a recommended practice to use
24 benzene to clean parts. You're talking about
25 things like automotive motors and

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02 transmissions and -- or industrial pumps and
03 motors or gear boxes. We certainly wouldn't
04 recommend using benzene for that, no.

05 Q. What solvent would you
06 recommend somebody to use in place of one
07 that contains five percent benzene?

08 MR. SYKES: Object to the form
09 of the question.

10 THE WITNESS: One that had a
11 lower toxicity. One that was not as
12 flammable. Maybe a petroleum naphtha
13 or a spotted solvent, or something
14 like that.

15 BY MR. DuPONT:

16 Q. What about for use as a rust
17 manager, what solvent would you recommend
18 other than the solvent containing five
19 percent benzene for use as a rust manager?

20 A. Well, I'm not in the business
21 of manufacturing, you know, rust penetrants.
22 So I wouldn't know. I would, you know, go to
23 someone who was knowledgeable regarding the,
24 you know, what you wanted the product to do.
25 I wouldn't recommend another product.

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01 JOHN P. MASAITIS

02 Q. Is there anything special about
03 benzene when it comes to rust penetration? I
04 mean does it do anything that any other
05 solvent can't do? Is benzene the only
06 solvent that can be used as a rust manager?
07 A. I'm not aware of what can or
08 cannot be used. As I said, I'm not in the
09 business of manufacturing materials that are
10 rust penetrants.

602, foundation
402, relevance

C

11 Q. If you could look through
12 Exhibit 1 that's -- oh, let me come back to
13 that.

14 You've given your example of
15 what you would do in response to someone
16 coming to you about how -- how a particular
17 solvent containing five percent benzene was
18 used and recommending an alternative solvent.
19 Conducting air monitoring or exposure
20 assessment in order to determine how long of
21 an exposure that individual had. What would
22 you do in a situation where an individual
23 came to you regarding the use of a solvent
24 containing benzene and you didn't have any
25 information regarding how much exposure was

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01 JOHN P. MASAITIS

02 caused by use of the product?

03 MR. SYKES: Object to the form
04 of the question.

05 THE WITNESS: What would I do?

06 BY MR. DuPONT:

07 Q. Right. Would you, under that
08 circumstance, recommend a different type of
09 solvent to use if you weren't knowledgeable
10 about how much benzene exposure was caused by
11 use of that solvent?

12 MR. SYKES: Object to the form
13 of the question.

14 THE WITNESS: I would become
15 knowledgeable regarding his exposure.
16 Because that's what industrial hygiene
17 is, it's all about worker exposure.
18 And, you know, we have to know what
19 the worker's exposure is. And we have
20 the equipment to make that
21 determination. So that's what we do.
22 If there's any question regarding
23 exposure, the first thing we do is, we
24 go out, we observe the operation.
25 What's the potential for exposure.

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01 JOHN P. MASAITIS
02 What control measures are in place.
03 What's the duration of the exposure.
04 Is it something that he just does for,
05 you know, two or three minutes a day
06 or is it something that he does for
07 hours a day every day. So there's an
08 awful lot involved in doing a worker
09 exposure evaluation. And then you
10 collect samples to quantify his
11 exposure. And then you can talk
12 intelligently about what needs to be
13 done. If his exposure is excessive,
14 the first thing you typically do is
15 see if there's a suitable substitute.
16 If there are, then you recommend that
17 to the operating people. If there's
18 not a suitable substitute, then you
19 look at the control measures that are
20 in place and how they can be enhanced
21 or additional control measures put in.
22 In the interim you use personal
23 protective equipment, if necessary.

24 BY MR. DuPONT:

25 Q. As a United States Steel

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01 JOHN P. MASAITIS
02 industrial hygienist, do you make informed
03 decisions without having to quantify data
04 about how much exposure a person had of
05 benzene?
06 A. Well if you see someone dumping
07 a 55 gallon drum of material on the floor,
08 and it's a highly volatile material, you know
09 the potential is very high. So you don't
10 have to take samples under, you know,
11 circumstances such as that.
12 Q. Sure. Circumstances such as
13 that, which are somewhat out of the ordinary.
14 But without having that type of circumstance,
15 can you make an informed decision as to
16 whether the product is causing a hazard,
17 without actually monitoring and getting
18 quantified data about the exposures?
19 A. Well, a lot of times when we
20 would go out in the workplace, in addition to
21 taking the breathing zone samples, we would
22 spend typically, you know, seven, eight hours
23 with the individuals, observing his work
24 practices. And in that process we would be
25 talking to the employee about maybe something

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02 that we saw that was increasing his exposure,
03 something he can do to minimize it. So
04 they're the type of things that typically
05 we'd do.
06 Q. Okay. And, in addition to
07 that, you'd also take air monitoring to see
08 how much benzene exposure was actually being
09 caused?
10 A. Exactly.
11 Q. Did U.S. Steel ever do that for
12 anybody working with Liquid Wrench during the
13 1960s, 1970s?
14 A. Not that I recall.
15 Q. Is U.S. Steel aware of whether
16 Radiator Specialty Company ever went to a
17 work site and conducted air monitoring for
18 individuals using the Liquid Wrench product
19 during the 1960s and 1970s?
20 A. I would have no way of knowing.
21 Q. Would you turn to Exhibit
22 Number 2, please, on the second page of the
23 exhibit, which is USS 2886?
24 A. Would it be in this packet?
25 Q. Yes, sir.

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01 JOHN P. MASAITIS

02 A. 2886.

03 Q. Correct.

04 A. All right.

05 Q. The document we're looking at
06 here again is the Occupational Medicine and
07 Industrial Hygiene Textbook by Rutherford P.
08 Johnstone from 1948. And we're looking here
09 at Chapter 17, the aromatic hydrocarbon. And
10 benzene obviously is an aromatic hydrocarbon;
11 correct?

12 A. Yes.

13 Q. In 1948, what this doctor is
14 writing, at the second paragraph, can you
15 read into the record what that says?

16 A. "While the use of benzol in
17 industry has been considerably reduced in
18 recent years, the incidence of benzol
19 poisoning is still fairly frequent. Too
20 often is benzol hidden under a trade name or
21 is carelessly substituted for less toxic
22 solvents."

23 Q. Benzol is a synonym or the same
24 word for benzene; correct?

25 A. Yes.

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02 Q. And what this doctor is
03 indicating is, as of 1948, there is a
04 reduction in the use of benzene or benzol in
05 the industry; correct?

06 A. Well, he's making a statement
07 here that it has been considerably reduced in
08 recent years. But I -- that's what he's
09 saying. I have no way of knowing whether or
10 not it's true or not.

11 Q. And he's indicating that there
12 have been incidences of benzol poisoning from
13 use of benzene; correct?

14 A. Yes.

15 Q. Do you know what benzol
16 poisoning is?

17 A. In 1948, you know, he's
18 probably talking about blood diseases, such
19 as anemia.

20 Q. Aplastic anemia as well?

21 A. I -- anemia. The difference --
22 differentiating amongst the anemias is not my
23 business.

24 Q. Do you know what aplastic
25 anemia is?

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01 . JOHN P. MASAITIS

02 A. I don't care to describe my
03 knowledge of it because I'm not a medical
04 person.

05 Q. Well, I'm asking, do you know
06 what is?

07 A. Not enough to medically
08 describe it, no.

09 Q. Okay. Do you know exactly how
10 benzene causes aplastic anemia?

11 A. No.

12 Q. Do you know how much benzene
13 exposure causes aplastic anemia?

14 A. I know what the permissible
15 exposure levels have been through the years
16 for exposure to benzene to prevent
17 occupational diseases. That's the area of
18 interest to industrial hygienists.

19 Q. But do you know exactly how
20 much benzene exposure causes aplastic anemia?

21 MR. SYKES: Object to the form
22 of the question.

23 THE WITNESS: You know, are we
24 talking in 1948 or are we talking
25 today or let me -- because the

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01 JOHN P. MASAITIS
02 knowledge has increased through the
03 years as time has gone by. It's been
04 determined that concentrations to
05 cause the diseases related to benzene
06 are lower.

07 BY MR. DuPONT:

08 Q. The doctor continues to write,
09 "Too often is benzol hidden under a trade
10 name."

11 A. Uh-huh.

12 Q. You would agree with me that
13 it's a problem to sell a product with benzene
14 in it under a different name so that somebody
15 doesn't know there is benzene in the product;
16 correct?

17 MR. FALLS: Objection to form.

18 THE WITNESS: If you do that to
19 mask benzene in a product, yes, that's
20 grossly wrong.

21 BY MR. DuPONT:

22 Q. And he -- the doctor goes on to
23 describe, it is careless to substitute
24 benzene for a less toxic solvent. Do you
25 agree with that?

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02 A. If there is a suitable
03 substitute that is less toxic, yes. But
04 there may be a process where there isn't a
05 known suitable substitute, then you would --
06 if you have to make the product, then you use
07 control measures.

08 Q. But you'd agree that if there
09 is a known solvent that's a substitute and
10 less toxic, it would be careless to continue
11 to use a solvent with benzene in it; correct?

12 MR. RILEY: Objection to form.

13 MR. SYKES: Object to form.

14 THE WITNESS: We always in
15 industrial hygiene recommend using the
16 most suitable substitute that is less
17 toxic, yes.

18 BY MR. DuPONT:

19 Q. If you continue down the page
20 to the fifth paragraph, it starts with the
21 words, chronic benzol poisoning. Could you
22 read that into the record, please?

23 A. "Chronic benzol poisoning
24 usually proceeds (sic) severe degrees of
25 injury to the blood forming organs and often

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01 JOHN P. MASAITIS
02 proves fatal. The blood picture is bizarre
03 and inconstant."

04 Q. I believe you said, usually
05 proceeds. Does it correctly read, "Chronic
06 benzol poisoning usually produces severe
07 degrees of injury to the blood forming organs
08 and often proves fatal"; is that correct?

09 A. Yes.

10 Q. This information, you would
11 agree, was available to United States Steel
12 as of 1948, when this document was published;
13 correct?

14 MR. SYKES: Object to the form
15 of the question.

16 THE WITNESS: Occupational
17 Medicine and Industrial Hygiene was
18 probably, you know, put out in the
19 occupational health community in one
20 form or another. So I guess you would
21 say that it was available.

22 BY MR. DuPONT:

23 Q. Have you seen documents from
24 U.S. Steel that the company became involved
25 with the Kettering Laboratories in the early

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01 JOHN P. MASAITIS
02 1950s, about 1953, in order to conduct
03 research as to how chemicals such as benzene
04 cause cancer?
05 A. In the 1950s, did you say?
06 Q. Correct, I believe around 1953.
07 A. No. That precedes my time. I
08 know there was a period where we had
09 discussions with Kettering Laboratories, but
10 I'm not aware of what went on in '53.
11 Q. Let me hand you a document and
12 see if you've seen it before, and see if it
13 can help us talk about this issue.
14 Mr. Masaitis, this is
15 Exhibit 3. I've got a copy here for your
16 counsel.
17 - - -
18 (Whereupon the document was
19 marked, for identification purposes,
20 as Masaitis Exhibit Number 3.)
21 - - -
22 BY MR. DuPONT:
23 Q. And this document bears the
24 Bates Number USS 16958 through 980 -- excuse
25 me. -- 16981, which would indicate that this

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01 JOHN P. MASAITIS
02 is a document that came from U.S. Steel's
03 records; correct?
04 A. I imagine.
05 MR. CARR: Andrew, are these
06 documents exhibits to this deposition?
07 MR. DuPONT: Yes.
08 BY MR. DuPONT:
09 Q. Have you ever seen this
10 document before?
11 A. Not that I recall. I may have,
12 but I don't recall seeing it before.
13 Q. The title of the document is
14 Minutes of a Meeting held at Kettering
15 Laboratory, Medical College, University of
16 Cincinnati, Cincinnati, Ohio, on Thursday,
17 April 30, 1953 for the Preliminary
18 Organization of Cooperative Research Work on
19 Carcinogenic Properties of Coal Tar and its
20 Components. Is that correct?
21 A. Yes, it is.
22 Q. And if you turn to the page
23 that is Bates numbered 16962. This provides
24 an indication of the representatives of
25 companies that either attended or showed

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01 JOHN P. MASAITIS
02 interest in the proposed research program on
03 the cancer hazards associated with coal tars?

04 A. Yes.

05 Q. And one of the individuals
06 listed there is a Mr. K. Morsc, M-O-R-S-C,
07 from U.S. Steel Corporation. Do you see
08 that?

09 A. Yes.

10 Q. Are you familiar with Mr.
11 Morsc?

12 A. He hired me.

13 Q. What was his title for U.S.
14 Steel?

15 A. He was the director of
16 industrial hygiene.

17 Q. Okay. And from reading this
18 document we can tell that U.S. Steel was
19 becoming involved with a research project
20 regarding how properties of coal, tar and its
21 components cause cancer?

22 MR. SYKES: Object to the form
23 of the question.

24 THE WITNESS: I haven't read the
25 full document. If -- as I really

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02 don't know what the purpose of the
03 meeting was or what was discussed.

04 BY MR. DuPONT:

05 Q. All right.

06 Let's go back to the first
07 page, if you don't mind. First of all, are
08 you familiar with the Kettering Laboratory?

09 A. Yes.

10 Q. What's your understanding of
11 what the Kettering Laboratory was?

12 A. It's a laboratory, occupational
13 health oriented, at the University of
14 Cincinnati. NIOSH works pretty closely with
15 Kettering. I have been there a couple of
16 times, as other members of our staff have for
17 different purposes.

18 Q. Are you aware that the American
19 Petroleum Institute has also participated in
20 research conducted at the Kettering Institute
21 -- excuse me, Kettering Laboratory?

22 A. No.

23 Q. U.S. Steel was a member of the
24 Manufacturing Chemists Association; is that
25 correct?

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01 JOHN P. MASAITIS

02 A. I believe they were different
03 times. I'm -- I would think that it's
04 probably safe to say they were, although I'm
05 not positive, not having a list of the
06 organizations they belonged to over the times
07 in front of me.

08 Q. Do you know when U.S. Steel
09 first became a member of the Manufacturing
10 Chemists Association?

11 A. No.

12 Q. Is benzene a component of coal
13 tar?

14 A. There could be some residual
15 amount of benzene in coal tar. It's possible
16 I would think.

17 Q. Did you also work under an E.E.
18 Moore? Are you familiar with that name?

19 A. I'm familiar with the name
20 vaguely, but he was never in our area of
21 responsibility.

22 Q. Who was -- what does the E.E.
23 stand for in E.E. Moore?

24 A. I have no idea.

25 Q. I'm going to hand you another

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Masaitis, John

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01 JOHN P. MASAITIS
02 document that's been marked as Exhibit 4. I
03 have a copy here for your counsel.

04 - - -

05 (Whereupon the document was
06 marked, for identification purposes,
07 as Masaitis Exhibit Number 4.)

08 - - -

09 BY MR. DuPONT:

10 Q. This document is Bates numbered
11 USS 16956 through 957. And this appears to
12 be a correspondence from Kenneth Morsc, who I
13 believe is the individual who hired you at
14 U.S. Steel?

15 A. Uh-huh.

16 Q. And it's directed to E.E.
17 Moore. It indicates on here that E.E. Moore
18 was the vice president of industrial
19 relations.

20 A. Okay.

21 Q. What was the industrial
22 relations department at United States Steel
23 Corporation?

24 A. That was the -- you might say
25 the parent department that included

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01 JOHN P. MASAITIS
02 occupational medicine, industrial hygiene,
03 safety. In other words, the directors of the
04 medical program, the safety program,
05 industrial hygiene program, we reported to
06 the vice president of industrial relations.
07 And it's changed through the years. But
08 could have been at this time that's the way
09 it was set up.

10 Q. Could you remind me of the year
11 you were first hired at United States Steel
12 Corporation?

13 A. '64.

14 Q. In this correspondence from Mr.
15 Morsc to Mr. Moore, which, by the way, is
16 dated May 20, 1953; correct?

17 A. Yes.

18 Q. Mr. Morsc is providing to Mr.
19 Moore a preliminary study of cancer
20 mortality, which Mr. Morsc apparently
21 discussed with Mr. Moore the day before?

22 A. Well, I have to read the --
23 read it, you know, if you're asking me
24 questions about it.

25 Q. Sure. Please take your time

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01 JOHN P. MASAITIS

02 and read it.

03 A. (Reading document.)

04 Okay.

05 Q. So am I correct that this
06 letter from Mr. Morsc to Mr. Moore is
07 transmitting some preliminary information
08 from a study of cancer mortality, in other
09 words, cancer deaths, among the United States
10 Steel Corporation workers? Is that correct?

11 A. At the Clariton facility,
12 including specific operations.

13 Q. And the Clariton facility, if
14 I'm correct, was the facility that made the
15 product raffinate?

16 A. Yes.

17 Q. And one of the things that this
18 study is doing is examining workers in the
19 benzene department. And it's indicated that
20 the benzene department is one of several
21 departments that would involve work areas at
22 which medical and public health officials are
23 casting a suspicion as a possible site for
24 exposure to industrial cancer producing
25 agents. Did I read that correctly?

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01 JOHN P. MASAITIS

02 A. Yes.

03 Q. So as of 1953, United States
04 Steel Corporation had information that made
05 it concerned that there could be cancer from
06 exposure to benzene; correct?

07 MR. SYKES: Object to the form
08 of the question.

09 THE WITNESS: Benzene and the
10 numerous other chemicals that are
11 found in the coking operations, the
12 byproducts operations and the tar
13 departments. I mean the coke ovens
14 themselves have several known human
15 carcinogens. And the coking process
16 was by far the largest process at
17 Clariton Works. I mean, it dwarfed
18 the byproducts plans, the benzene, the
19 -- as we call it, the BTX area, the
20 tar department. That's where we
21 converted the coal to coke.

22 BY MR. DuPONT:

23 Q. I understand that, sir. But
24 you would agree with me that based on this
25 document, the indication is that United

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01 JOHN P. MASAITIS
02 States Steel Corporation had concerns that
03 there was a cancer risk in those working
04 around benzene; correct?

05 MR. SYKES: Object to the form
06 of the question.

07 THE WITNESS: Not specifically
08 benzene. As I said, you can't take
09 one of the areas out because that's
10 the area that you may be interested in
11 and say, yes, this is the material
12 that causes cancer. Not when you have
13 coke ovens and, you know, others -- so
14 many other products there that are
15 known human carcinogens. And so many
16 more people are exposed to the coke
17 oven products. I mean, I can't give
18 you a proportion, but I believe there
19 were thousands of people that worked
20 on the coke ovens, whereby there may
21 have only been a hundred people that
22 worked in the benzene area on the
23 three shifts.

24 BY MR. DuPONT:

25 Q. The benzol department, or the

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01 JOHN P. MASAITIS

02 benzene department was an area of cancer
03 concern for United States Steel as of 1953;
04 correct?

05 A. Along --

06 MR. SYKES: Object to the form
07 of the question.

08 THE WITNESS: Along with these
09 other areas where there were known
10 human carcinogens.

11 MR. DuPONT: Do you want to take
12 that break?

13 VIDEO TECHNICIAN: We're going
14 off the record at 10:09 a.m.

15 - - -

16 (Whereupon there was a recess in
17 the proceeding.)

18 - - -

19 VIDEO TECHNICIAN: We're back on
20 the record at 10:20 a.m.

21 Counsel, you may proceed.

22 BY MR. DuPONT:

23 Q. Okay, Mr. Masaitis. Now, when
24 you began with U.S. Steel in 1964 there were
25 already in place practices and procedures for

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P - (KREN) 12/21/11

Transcript of Masaitis, John

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01 JOHN P. MASAITIS
02 monitoring workers' exposure to benzene at
03 U.S. Steel's facilities, were there not?

04 A. Yes.

05 Q. And they included monitoring
06 the air, monitoring the blood and even the
07 urine of workers for indication of benzene
08 exposure; correct?

09 A. Yes.

10 Q. And it's your understanding
11 that that was a practice that U.S. Steel had
12 conducted for a number of years prior to your
13 beginning with the company in 1964 in order
14 to monitor their workers' exposure to
15 benzene; correct?

16 A. Yes.

17 Q. And the purpose of that
18 monitoring was to determine whether or not
19 individuals were being placed at risk for any
20 occupational disease from benzene exposure;
21 correct?

22 A. Yes.

23 - - -

24 (Whereupon the document was
25 marked, for identification purposes,

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Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 as Masaitis Exhibit Number 5.)

03 - - -

04 BY MR. DuPONT:

05 Q. I take it you've seen a
06 document I'm going to hand to you that has
07 been marked as Exhibit Number 5. I
08 apologize, I don't have another copy. It's
09 Bates Number 16905 to 16951.

10 According to records provided
11 to us this document is dated August 14th,
12 1956 and it's entitled, Survey of Potential
13 Toxic Gas Hazards in Coal Chemical Operations
14 at Gary Steel Works. And it's a United
15 States Steel Corporation document; is that
16 correct?

17 A. Yes. I'm looking for a date.
18 I don't see the date.

19 Q. I did not see the date on the
20 document either, but on the index that was
21 provided to us by counsel for U.S. Steel,
22 under which this document was produced, it
23 indicated that the document was dated
24 August 14th, 1956. Are you aware of that?

25 A. No.

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01 JOHN P. MASAITIS

02 Q. Okay. If you look, I believe
03 you have that index in the materials that
04 you've brought with you today. I just want
05 to make sure we're on the same page with
06 respect to the date of the document.

07 A. This was provided in this
08 group?

09 Q. I believe the index of the
10 document that was produced to us was among --

11 MR. SYKES: In our document
12 production --

13 BY MR. DuPONT:

14 Q. Defense Exhibit 3 there.

15 MR. DuPONT: Counsel, we can
16 make this easier --

17 MR. SYKES: If you just accept
18 his representation.

19 THE WITNESS: Fine. That's
20 fine. No, it's definitely a document
21 of U.S. Steel. You know, I just
22 didn't see any date on it.

23 MR. DuPONT: Counsel, can we
24 have an agreement that it's dated
25 August 14th, 1956?

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Page 63

01 JOHN P. MASAITIS
02 MR. SYKES: Can we look at the
03 document?
04 MR. DuPONT: Sure, you can look
05 at the document and compare it to the
06 index and Bates number.
07 BY MR. DuPONT:
08 Q. I see. Are you referring to
09 Bates Number 16910, where it indicates the
10 date June 11 to 15 inclusive, 1956?
11 A. Yes.
12 Q. So that would indicate to you
13 that this document was from the June time
14 period of 1956?
15 A. Yes.
16 Q. And generally what's going on
17 here is, U.S. Steel is monitoring its
18 employees for exposure to benzene because of
19 health hazards associated with benzene?
20 A. Yes. It says benzene was one
21 of, it looks like seven or eight other
22 materials that were studied.
23 Q. And additionally what's
24 happening here is, United States Steel
25 Corporation is making recommendations with

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01 JOHN P. MASAITIS
02 respect to training and educational and
03 control programs in order to prevent health
04 hazards of benzene exposure; is that correct?

05 A. I haven't read the document,
06 but that sounds logical.

07 Q. If you look to Bates Number
08 16962?

09 A. 962?

10 Q. 16926, excuse me.

11 A. Oh.

12 Q. On this page there's a section
13 under the word benzol, which we've already
14 discussed is benzene; is that correct?

15 A. Yes.

16 Q. And would you confirm for me
17 that U.S. Steel is writing in 1956 that
18 benzene vapor is considered one of the most
19 toxic industrial poisons?

20 A. Yes.

21 Q. And in the next paragraph U.S.
22 Steel is providing a summary of some of the
23 health hazards that are associated with
24 exposure to benzene. If you could look at
25 the second sentence of that next paragraph,

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01 JOHN P. MASAITIS

02 starting with "the most", could you read that
03 into the record?

04 A. The second paragraph, the
05 second sentence?

06 Q. Correct.

07 A. "The most conspicuous effect,
08 however, is the effect on the blood and blood
09 forming organs, especially the bone marrow
10 and blood vessels."

11 Q. And what we're talking about
12 here is the effect of benzene exposure on the
13 blood and bone marrow system; correct?

14 A. Yes.

15 Q. And it's that effect on the
16 blood and bone marrow system that leads to
17 cancer, such as myelodysplastic syndrome and
18 acute myelogenous leukemia; correct?

19 MR. SYKES: Objection to form.

20 THE WITNESS: I'm not a medical
21 doctor, but it's -- could very well
22 be.

23 BY MR. DuPONT:

24 Q. It's your understanding that
25 benzene is known to cause myelodysplastic

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Masaitis, John

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01 JOHN P. MASAITIS
02 syndrome and acute myelogenous leukemia;
03 correct?

04 A. It causes leukemia. You know,
05 I just know that it causes leukemia.

06 Q. And you're aware that leukemia
07 is a cancer of the blood and bone marrow
08 producing system; correct?

09 A. Yes.

10 Q. If you'll turn back to page six
11 of the document, which is also 16917. Since
12 U.S. Steel was aware that benzene is toxic to
13 the blood and bone marrow forming system, one
14 of the things it's doing to protect workers
15 is to have examinations of the blood in order
16 to examine the amount of benzene exposure
17 that's happening and that effect on its
18 workers; correct?

19 A. To monitor the consequences of
20 benzene exposure, yes.

21 Q. Do you know when U.S. Steel --
22 certainly it was doing it as of 1956, but do
23 you know when U.S. Steel began the practice
24 of monitoring the blood of its workers for
25 benzene exposure?

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01 JOHN P. MASAITIS

02 A. I can't say specifically.

03 Q. And U.S. Steel had had
04 incidences, or at least one incidence of one
05 of its workers contracting benzol poisoning
06 or benzene poisoning from exposure to
07 benzene. Have you seen that in the records?

08 A. I can't recall any specifics.
09 There could have been, you know, an incident.
10 I can't recall.

11 Q. I'm handing you a document
12 that's been marked as Exhibit Number Six.

13 - - -

14 (Whereupon the document was
15 marked, for identification purposes,
16 as Masaitis Exhibit Number 6.)

17 - - -

18 BY MR. DuPONT:

19 Q. This is a September 17, 1957
20 letter from H.K. Bumsted to K.M. Morsc?

21 A. Yes.

22 Q. And that's on United States
23 Steel Corporation letterhead?

24 A. Yes.

25 Q. Are you familiar with H.E. --

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01 JOHN P. MASAITIS
02 is it Humsted or Bumsted, I can't read it?
03 A. Howard E. Bumsted.
04 Q. Are you familiar with Mr.
05 Bumsted?
06 A. Yes.
07 Q. What was his position at United
08 States Steel?
09 A. He was the chief industrial
10 hygiene chemist working in the laboratory of
11 the industrial hygiene laboratory.
12 Q. And it appears from this
13 correspondence that there was a report of
14 somebody indicating that they had contracted
15 benzene poisoning from working at United
16 States Steel?
17 A. The subject is alleged benzol
18 poisoning case. Incident prepared by the
19 Department of Iron Works.
20 Q. Right.
21 A. Yes.
22 Q. There is an individual who had
23 reported that he believed that he had benzol
24 poisoning from working at the Clariton plant?
25 A. I haven't read the memo yet,

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01 JOHN P. MASAITIS
02 but I'm just looking at the subject where it
03 says, excuse me, alleged benzol poisoning
04 case.

05 Q. Correct.

06 (During your employment at U.S.
07 Steel, were there times that you had to take
08 employees out of an area where benzene was
09 being used and produced because of their
10 exposures?)

11 A. I can't recall any such
12 incidents.)

13 Q. Were you involved as an
14 industrial hygienist at U.S. Steel in
15 investigating Workers' Compensation claims
16 where somebody indicated that they were
17 injured on the job from exposure to a
18 chemical?

19 A. I could have been. Here again,
20 I can't recall any specific time that I went
21 out into a facility for that purpose.

22 Q. Was that part of the job duties
23 of an industrial hygienist for U.S. Steel
24 during the 1960s?

25 A. Any monitoring that's done is

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01 JOHN P. MASAITIS
02 done by industrial hygiene, yes. So if there
03 was an allegation of an exposure that caused
04 some disease, then industrial hygiene
05 typically would be called to go out and
06 determine what the exposure was as well.

07 Q. Part of the reason you would be
08 called to go out and determine the exposure
09 levels would be to help defend the company
10 against a Workers' Compensation claim brought
11 by injured workers?

12 MR. SYKES: Object to the form
13 of the question.

14 THE WITNESS: No. I mean, we
15 are interested in the worker. The
16 foundation of industrial hygiene is
17 worker exposure. That's the only
18 thing we're interested in, is worker
19 exposure. And after that, other
20 people in the corporation make
21 decisions. We evaluate the exposure
22 and we say what it is. We prepare the
23 criteria that exists and, where it's
24 necessary, we would make
25 recommendations to control the

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS

02 workers' exposure if need be.

03 BY MR. DuPONT:

04 Q. But were you not asked on

05 behalf of the corporation to gather

06 information in the context of Workers'

07 Compensation claims brought by injured

08 workers?

09 A. We may have been asked to state

10 an opinion, but I would -- here again, I

11 can't recall any specific cases where I was

12 involved with that or anyone else. But

13 industrial hygiene is worker exposure.

14 Defending the corporation, we're just

15 interested in worker exposure. I mean, that

16 -- that's all.

17 Q. Okay. How many benzene
18 exposure Workers' Compensation claims were
19 you involved in as an industrial hygienist at
20 U.S. Steel?

21 A. I can't recall any.

22

- - -

23 (Whereupon the document was

24 marked, for identification purposes,

25 as Masaitis Exhibit Number 7.)

403, prejudice of
reference to workers
compensation -
collateral source

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Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS

02 - - -

03 BY MR. DuPONT:

04 Q. This is another document that's
05 been marked as Exhibit Number 7. This is
06 another document that outlines some aspects
07 of United States Steel Corporation's
08 practices and procedures for protecting its
09 own workers against exposure to benzene;
10 correct?

11 A. This is -- appears to me to be
12 a pretty all inclusive document. The subject
13 being periodic occupational examinations.
14 And it lists numerous examinations that in
15 most cases would not really have any exposure
16 to benzene.

17 Q. If you'll look to the second
18 page. The first full paragraph under
19 standard job title, plant job title, et
20 cetera, it includes a reference to monitoring
21 benzol workers; correct?

22 A. Yes. I see benzol workers
23 included amongst, you know, the other
24 workers.

25 Q. Okay. And, in fact, benzol

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01 JOHN P. MASAITIS
02 workers are classified as one of the critical
03 occupations for which the plant medical
04 department has made the determination that
05 employees should be monitored for exposures;
06 correct?

07 A. Yes.

08 - - -
09 (Whereupon the document was
10 marked, for identification purposes,
11 as Masaitis Exhibit Number 8.)

12 - - -

13 BY MR. DuPONT:

14 Q. I'm handing you Exhibit
15 Masaitis 8. This, Mr. Masaitis, is a
16 document that was also produced to us by
17 United States Steel Corporation from its
18 records in response to discovery requests
19 that we served in this case. And its Bates
20 numbered USS 2905 to 2907. The title is,
21 "Handbook of Organic Industrial Solvents",
22 Third Edition. And if you look to the second
23 page, it's dated 1966.

24 A. Uh-huh.

25 Q. Do you see that?

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01 JOHN P. MASAITIS
02 A. Yes, I do.
03 Q. And it references the American
04 Mutual Insurance Alliance.
05 A. Yes.
06 Q. Are you familiar with that
07 company?
08 A. No.
09 Q. Do you know what United States
10 Steel Corporation's dealing with that company
11 was?
12 A. I have no idea.
13 Q. If you look to the third page
14 of the document, which is Bates Number USS
15 2907.
16 A. Yes.
17 Q. This provides information
18 regarding health hazards of a number of
19 chemicals, including benzene?
20 A. Yes.
21 Q. Is that correct?
22 Can you tell me whether I'm
23 reading this correctly or not, it states that
24 benzene is implicated as a producer of
25 leukemia, a blood cancer. It's hard to read,

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01 JOHN P. MASAITIS

02 it's on the fourth line down.

03 A. I can see that. Benzene is
04 implicated as a producer of leukemia, a blood
05 cancer. All right.

06 Q. Is that correct?

07 A. That's what it says.

08 Q. Do you know how U.S. Steel
09 received this document in 1966?

10 A. I have no idea.

11 Q. Is this a document that you had
12 available to you as an industrial hygienist
13 at U.S. Steel in the 1960s?

14 A. I don't recall seeing this
15 publication.

16 Q. Would this have been a document
17 kept in U.S. Steel Corporation's medical
18 department?

19 A. I have no idea.

20 Q. Were you aware in 1964 that
21 benzene had been reported to cause leukemia?

22 A. I don't recall reading anything
23 regarding that in '64, no.

24 Q. Did you ever make any effort in
25 the 1960s to research United States Steel

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01 JOHN P. MASAITIS
02 Corporation's records for all the information
03 it had regarding benzene's ability to cause
04 cancer?
05 A. Did I ever make an effort?
06 Q. Yes, sir.
07 A. Well, as I said, the industrial
08 hygiene responsibility is the worker
09 exposure. And typically we're out in the
10 workplace doing worker exposure evaluations.
11 So when we have time we read what literature
12 is available and what we think is pertinent
13 to the conditions in our facilities.
14 Q. Did you ever sit down and go to
15 U.S. Steel's library and read up on all the
16 information the company had on benzene's
17 ability to cause leukemia?
18 A. I never recall doing that. And
19 I don't know that I would have been able to
20 find time to do that.
21 Q. What were the typical texts
22 that you would look to for information on the
23 health hazards of chemicals as it related to
24 your work as an industrial hygienist in the
25 1960s and 1970s?

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01 JOHN P. MASAITIS
02 (A.) (Well, typically, we read --
03 subscribe to the American Industrial Hygiene
04 Association journals. ACGIH journals. There
05 were other publications that we got. There
06 were some handbooks written by people like
07 Hatch and Drinker. And so they're typically
08 the type of books we looked at. And, you
09 know, newer publications, work was going on.
10 Research that was being done and the various
11 materials. But other than the journals that
12 we got, I can't specifically today think of
13 anything that we relied on. But if need be,
14 we knew where to look. There were libraries
15 nearby.)
16 (Q.) (What were the standard
17 industrial hygiene texts that were out there
18 in the 1960s and 1970s?)
19 (A.) (Texts, you mean textbooks?)
20 (Q.) (Textbooks.)
21 (A.) (Well, as I said, you know, Sax
22 was pretty prominent. Drinker and Hatch they
23 were good publications.)
24 (Q.) (Was Sax something that United
25 States Steel Corporation kept in its

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01 JOHN P. MASAITIS
02 industrial hygiene department in the 1960s?
03 A. We had the Sax publication,
04 yes. We had other publications like the --

05 published by, say, the Manufacturers Chemical
06 Association, their Material Safety Data
07 Sheets, that sort of thing.

611, non-responsive

08 Q. Did any of the Manufacturing
09 Chemists Association, Material Safety Data
10 Sheets or documents, prior to 1978, indicate
11 that benzene causes leukemia, or was reported
12 to cause leukemia?

13 A. Not that I recall, no.

14 Q. Did any of the Manufacturing
15 Chemists Association documents, before 1978,
16 discuss cancer in the context of benzene?

17 A. I can't recall specifically. I
18 can't say whether they did or they didn't. I
19 can't recall every specific discussion of
20 each and every subject of the publications
21 that we had.

22 Q. Was there ever a warning in a
23 Manufacturing Chemist Association document,
24 before 1978, stating that benzene can cause
25 cancer?

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01 JOHN P. MASAITIS

02 MR. SYKES: Object to the form
03 of the question.

04 THE WITNESS: I can't -- sitting
05 here now, I can't think of, you know,
06 specifically seeing the word cancer,
07 but certainly there were other words
08 that would lead us possibly, you know,
09 one, to look at the diseases of the
10 blood forming organs.

11 BY MR. DuPONT:

12 Q. You never saw the word cancer
13 associated with benzene?

14 A. I'm not saying that it wasn't
15 in the publication. As I said, as I sit here
16 today, I can't recall seeing them. I'm being
17 very honest. I can't recall seeing the word
18 cancer. But I'm not saying that it wasn't
19 there just because I can't recall seeing it
20 in any and all of their publications.

21 Q. Did you receive information
22 from the American Petroleum Institute, or did
23 United States Steel Corporation receive
24 information from the American Petroleum
25 Institute concerning the health hazards of

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01 JOHN P. MASAITIS

02 benzene prior to 1978?

03 A. I can think of no publications,
04 but here again, I'm -- I wouldn't deny that
05 we did. Or I wouldn't subscribe to the fact
06 that we did. I just can't think of any now.

07 Q. During the sixties and
08 seventies, and even before then, the two
09 major sources of, in general terms, benzene
10 production came from coal operations such as
11 U.S. Steel, and then the crude oil
12 operations, such as those performed by the
13 members of the American Petroleum Institute.
14 Is that generally correct?

15 A. They're typically the major
16 sources of benzene production.

17 Q. Was U.S. Steel aware, during
18 the 1960s and 1970s, that the American
19 Petroleum Institute and its members had been
20 researching benzene and its health hazards?

21 A. I can't recall being aware of
22 what the API was doing at that time.

23 Q. Have you seen that in documents
24 produced by U.S. Steel in this case?

25 A. Not that I recall.

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01 JOHN P. MASAITIS

02 Q. When you went to -- I believe
03 you had testified before, and please I'm
04 going off my memory, so if I'm incorrect,
05 please let me know. You had attended --
06 well, let me just ask you this.

07 Well, have you ever attended
08 meetings of the Manufacturing Chemists
09 Association?

10 A. I attended some meetings when
11 it was -- I think, as you said, the Chemical
12 Manufacturers Association, which I think was
13 in later years. Is that correct, the same
14 organization? Yes.

15 Q. When did you begin to attend
16 those meetings?

17 A. Oh, I would say when I was
18 possibly the manager of industrial hygiene.
19 As I rose through the ranks of industrial
20 hygiene for the corporation, I may have
21 represented the corporation in some of the
22 CMA meetings.

23 Q. What dates were those? When
24 did you first become a manager?

25 A. I would say in the eighties

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01 JOHN P. MASAITIS

02 possibly.

03 Q. At the time that you were
04 attending the CMA, the Chemical Manufacturers
05 Association, meetings, were there industrial
06 hygienists and other professionals from oil
07 companies that were members of the American
08 Petroleum Institute?

09 A. At the CMA meetings?

10 Q. Yes.

11 A. Not that I recall.

12 - - -

13 (Whereupon the document was
14 marked, for identification purposes,
15 as Masaitis Exhibit Number 9.)

16 - - -

17 BY MR. DuPONT:

18 Q. This is Number 9. Mr.
19 Masaitis, this is -- and take a minute to
20 look at it. This is a copy of the cover and
21 the title page and a section of the Sax --
22 Irving Sax, "Dangerous Properties of
23 Industrial Materials", Third Edition. Is
24 that correct?

25 A. Yes.

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01 JOHN P. MASAITIS

02 Q. And it's dated 1968, if you'll
03 look to the second page.

04 A. Okay. '68, yeah.

05 Q. This is one of those standards
06 in industrial hygiene texts you had
07 identified for me just a couple minutes ago?

08 A. Yes.

09 Q. This is the type of text that
10 U.S. Steel kept in its library?

11 A. We had a copy of Sax.

12 Q. If we turn to the third page of
13 the exhibit, which is Bates numbered US 2910,
14 you'll see about midway down, in the lefthand
15 column, there's a paragraph that begins with,
16 "The chronic"?

17 A. Yes.

18 Q. Would you read what that says
19 into the record, please?

20 A. It says, "The chronic, rather
21 than the acute form of benzene poisoning is
22 important in industry; it has a toxic action
23 on the blood-forming tissues. There is no
24 specific blood picture occurring in cases of
25 chronic benzol poisoning."

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01 JOHN P. MASAITIS
02 Q. Now, when we talk about the
03 terms chronic and acute, acute means a short
04 term, high level exposure; correct?
05 A. Yes.
06 Q. And chronic refers to a longer
07 term, lower level exposure; correct?
08 A. A longer term, lower level,
09 yes.
10 Q. Lower level?
11 A. Uh-huh.
12 Q. If you continue to the next
13 paragraph.
14 A. "The bone marrow may be -- and
15 I'm having a difficult time reading this.
16 May be bioplastic, normal or hyperplastic
17 (sic), the changes being reflected in the
18 peripheral blood."
19 Q. That says, hypoplastic?
20 A. Hypoplastic, yeah.
21 Q. Hypoplastic, do you understand
22 that means that there is a deficiency in
23 blood cells in the bone marrow?
24 A. I'm not a medical person.
25 Hypoplastic could mean -- I would have to

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01 JOHN P. MASAITIS
02 look up the definition if I was going to
03 state what indeed it is.
04 Q. Okay. What we're talking about
05 here is the effect of benzene exposure on the
06 blood and bone marrow?
07 A. Uh-huh.
08 Q. Could you continue to read the
09 next sentence, please?
10 A. Anemia, leukopenia,
11 macrocytosis, it looks like, reticulocytosis,
12 thermo iso -- I'm just having difficulty
13 reading this -- high colon index and
14 prolonged bleeding time may be present.
15 Cases of myeloid leukemia have been reported.
16 Q. What this standard industrial
17 hygiene text is indicating is that there have
18 been reports of individuals contracting a
19 myeloid leukemia form from exposure to
20 benzene; correct?
21 A. It says, cases of myeloid
22 leukemia have been reported, yes.
23 Q. And this is under the
24 toxicology heading for benzene. So it's
25 talking about benzene exposure leading to

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01 JOHN P. MASAITIS
02 individuals contracting myeloid leukemia; is
03 that correct?

04 A. Yes.

05 Q. And this is information that
06 was available obviously to U.S. Steel in the
07 1960s, since it was in their library, as you
08 previously testified?

09 A. Yes.

10 Q. And you confirmed for me that
11 U.S. Steel never indicated on any of its
12 Material Safety Data Sheets for either
13 raffinate or benzene that benzene exposure
14 had been reported to cause leukemia at any
15 point in time up until 1982?

16 Strike that, let me re-ask the
17 question.

18 Prior to 1982, U.S. Steel never
19 reported on a Material Safety Data Sheet that
20 benzene exposure had been reported to cause
21 leukemia; is that correct?

22 A. I can recall saying that.

23 MR. DuPONT: Let's take about a
24 two minute break.

25 VIDEO TECHNICIAN: We're going

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01 JOHN P. MASAITIS
02 off the record at 10:54 a.m.
03 - - -
04 (Whereupon there was a recess in
05 the proceeding.)
06 - - -
07 VIDEO TECHNICIAN: We're back on
08 the record at 11:07 a.m.
09 Counsel, you may proceed.
10 MR. DuPONT: Thank you.
11 BY MR. DuPONT:
12 Q. Mr. Masaitis, did Radiator
13 Specialty Company have an industrial hygiene
14 department or medical department in the
15 1950s, 1960s, 1970s?
16 A. I'm not aware of that, if they
17 did or they did not.
18 Q. Did U.S. Steel know, during
19 that time period, whether or not Radiator
20 Specialty Company had an industrial hygiene
21 department or medical department?
22 A. I -- here again, I have no
23 idea. I did not know of -- I never heard
24 anyone speak about Radiator Specialty
25 Company's medical department or industrial

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01 JOHN P. MASAITIS

02 hygiene department.

03 Q. Did U.S. Steel have any
04 knowledge as to whether or not Radiator
05 Specialty Company had any industrial
06 hygienists or medical doctors that worked for
07 it during the 1950s, 1960s, 1970s?

08 A. I have no idea if they did or
09 they did not, nor am I aware of anyone at
10 United States Steel who would have that
11 knowledge.

12 - - -
13 (Whereupon the document was
14 marked, for identification purposes,
15 as Masaitis Exhibit Number 10.)

16 - - -

17 BY MR. DuPONT:

18 Q. I've marked another document as
19 Exhibit 10. And this is a copy from another
20 text that came from United States Steel
21 Corporation and its records, as produced to
22 us in discovery. The text is Industrial
23 Toxicology, Third Edition by Alice Hamilton
24 and Harriet Hardy, and it's dated 1974, if
25 you look at the copyright date on the second

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01 JOHN P. MASAITIS
02 page of the exhibit. Do you see that?
03 A. Uh-huh.
04 Q. Am I correct that this is a
05 publication from 1974?
06 A. Yes.
07 Q. Are you familiar with this
08 publication from Alice Hamilton and Harriet
09 Hardy?
10 A. Yes.
11 Q. And Dr. Hamilton apparently was
12 a Professor Emeritus of Industrial Medicine
13 at the Harvard School of Public Health?
14 A. Yes.
15 Q. And Dr. Hardy apparently was
16 also from Harvard Medical School, as well as
17 another several institutions that are listed
18 on there. Do you see that?
19 A. Yes, I do.
20 Q. If you look to the page that's
21 Bates numbered 2915.
22 A. (Complying with request.)
23 Q. If you'll look at the first
24 full paragraph, the paragraph that begins
25 with the words, while there. Could you

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01 JOHN P. MASAITIS
02 confirm for me that the text after -- you
03 know, why don't you just start by reading
04 that sentence, while there. Read that and
05 the second sentence, please?

06 A. "While there has been no doubt
07 for many years that benzene can produce fatal
08 aplastic anemia, the association between
09 benzene exposure and leukemia has been a
10 matter of more recent controversy."

11 Q. Okay. Can you read the second
12 paragraph too, please -- I'm sorry, the
13 second sentence too, please? It begins with,
14 "it is now".

15 A. "It is now generally accepted
16 that benzene can produce leukemia of varying
17 forms, and that such leukemia can appear with
18 or without an antecedent history of aplastic
19 anemia."

20 Q. Have you ever seen this
21 document before?

22 A. Not that I recall.

23 Q. This wasn't provided to you by
24 attorneys for U.S. Steel in order to prepare
25 for your deposition?

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01 JOHN P. MASAITIS
02 A. I don't recall seeing this
03 document before.
04 Q. Can you turn back to page 2914?
05 A. (Complying with request.)
06 Q. Under the heading, "Toxic
07 Effects", the second paragraph. Can you
08 confirm that this report -- this document
09 reports that chronic benzene poisoning is of
10 far greater toxicological significance than
11 what it's referring to above as acute benzene
12 poisoning?
13 A. That's what it says.
14 Q. It goes on to discuss that the
15 incidence of benzene poisoning has decreased
16 over the years as industrial hygiene measures
17 have improved, and there has been a
18 thoughtful and technically satisfactory
19 search for less toxic benzene substitutes.
20 A. Yes.
21 Q. Is that correct?
22 A. Yes. That's what it says.
23 Q. Did U.S. Steel have a practice
24 of marketing to its customers less toxic
25 alternatives to benzene than benzene

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01 JOHN P. MASAITIS

02 containing solvents during the 1960s and
03 1970s?

04 A. We had less toxic solvents that
05 we manufactured, such as toluene and xylene.

06 Q. And did U.S. Steel consider
07 toluene and xylene an adequate replacement
08 for benzene as a solvent?

09 A. We -- I don't think we're in a
10 position to make that determination. I think
11 that the people who were purchasing the
12 benzene certainly knew that, you know, we
13 manufactured the toluene and xylene. And
14 that if they felt that they would be suitable
15 substitutes for what they would be using the
16 benzene for, then I think that they would
17 have made the change.

18 Q. Did U.S. Steel ever sit down
19 with a customer and say, hey, you know, we
20 recommend toluene and xylene. If you're
21 thinking about using a chemical or a solvent
22 with benzene in it, try to use toluene or
23 xylene because it's less toxic?

24 A. Somebody at U.S. Steel may
25 have, someone who was aware of the processes

611, beyond scope of
cross

611, non-responsive
602, speculation

611, beyond scope of cross
602, speculation
611, non-responsive

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01

JOHN P. MASAITIS

02 for which the material we were selling were
03 used for, but certainly not myself.)

04 Q. Do you know if that
05 conversation ever took place with Radiator
06 Specialty Company?

602, speculation
611, non-responsive
beyond scope of cross

07 A. I have no idea if it did or did
08 not. Certainly there was, you know, a lot of
09 correspondence between the chemists at
10 Radiator Specialty Company and our technical
11 people in the -- we call it the BTX plant,
12 benzene, toluene and xylene plant.)

13 Q. Do you see any correspondence
14 where U.S. Steel is suggesting to Radiator
15 Specialty Company that rather than use
16 raffinate, which contains benzene in as much
17 as 15 percent, Radiator Specialty Company
18 should consider substituting that solvent
19 with something less toxic, such as toluene or
20 xylene?

602, speculation
611, non-responsive,
beyond scope of cross

21 A. I think Radiator Specialty
22 Company was in a position, you know, to make
23 that determination more so than, you know,
24 U.S. Steel because as the manufacturer of the
25 penetrating material, they were the ones who

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01 JOHN P. MASAITIS

02 had tests done regarding the penetrating
03 capabilities. And as I said, they certainly
04 were aware that we manufactured toluene and
05 xylene. So if they thought that it would
06 have been suitable, they probably would have
07 taken that route.

continuation of objection

0

08 MR. RILEY: Objection.

09 BY MR. DuPONT:

10 Q. Was U.S. -- was Radiator
11 Specialty Company in a better position than
12 U.S. Steel to evaluate the toxicity of
13 benzene -- of a solvent containing benzene
14 versus toluene and xylene?

602, foundation
speculation

0

15 A. I would think that we probably
16 were in an equally, you know, comparable
17 position. I mean, if you're manufacturing,
18 using material as an employer, it's incumbent
19 upon you to be aware of the toxicity of the
20 materials that your employees are working
21 with.

22 Q. Did Radiator Specialty Company
23 ever conduct any standardized mortality
24 studies or studies into the incidence of
25 cancer among its employees?

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01 JOHN P. MASAITIS

02 A. I am not aware of that.

03 Q. You have no knowledge that

04 Radiator Specialty Company had any type of

05 medical department or industrial hygiene

06 department; correct?

07 A. In-house departments I am not

08 aware of.

09 Q. Are you aware of any documents
10 that Radiator Specialty Company maintained,
11 such as those that we've seen today that U.S.
12 Steel maintained, regarding the health
13 hazards of benzene, including benzene being
14 reported to cause leukemia?

15 MR. SYKES: Object to the form
16 of the question.

17 THE WITNESS: I think, you know,
18 Radiator Specialty Company was a
19 sophisticated user. I think they were
20 a reputable employer. And I think
21 they had access to the same
22 information that the rest of the
23 industry had access to.

24 BY MR. DuPONT:

25 Q. What specific information did

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01 JOHN P. MASAITIS
02 Radiator Specialty Company have in its
03 possession to indicate that benzene could
04 cause cancer prior to 1978?

05 A. I was never at a Radiator
06 Specialty Company facility, so I have no
07 idea, you know, what their library looked
08 like or anything regarding that. But I'm
09 saying that as a manufacturer in -- even in
10 the forties and fifties, there were
11 departments out there, like the U.S. Public
12 Health Service and state organizations that
13 visited manufacturing facilities to inspect
14 them, to do the same type industrial hygiene
15 work that I was doing at U.S. Steel and the
16 Commonwealth of Pennsylvania.

17 Q. Do you know if that ever
18 happened? Do you have any specific knowledge
19 that would tell you what Radiator Specialty
20 Company knew about benzene's ability to cause
21 cancer during the 1950s, 1960s, 1970s?

22 A. I have no specific knowledge,
23 but I do have the general knowledge of what
24 was going on in the occupational health field
25 at that time.

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01 JOHN P. MASAITIS

02 Q. You also had not seen any
03 correspondence from U.S. Steel to Radiator
04 Specialty Company where U.S. Steel is
05 recommending a safer solvent other than
06 raffinate, which contained benzene, for its
07 applications; is that correct?

08 A. I have never seen any
09 correspondence, no.

10 Q. Are you familiar with a term,
11 hierarchy of safety when it comes to
12 industrial hygiene and workplace safety?

13 A. Now, you're intermixing apples
14 and oranges. Safety is not industrial
15 hygiene. Safety is a discipline of its own.
16 Industrial hygiene is looking at the health
17 aspects of worker exposure, whereas safety is
18 looking at the physical caught by, struck by
19 type aspects. So when you say industrial
20 hygiene safety, it's somewhat confusing to
21 me.

22 Q. Well, as a general principal,
23 is it not a -- not considered a safer
24 practice to remove a health hazard than to
25 warn against it or to guard against it

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01 JOHN P. MASAITIS
02 through the use of protective -- personal
03 protective equipment, for example?

04 A. Well, yes, it's always better
05 to remove the source than trying to protect
06 against it. That's, of course, saying that
07 it's possible to remove the source.

08 MR. DuPONT: Let's go off the
09 record.

10 VIDEO TECHNICIAN: We're going
11 off the record at 11:21 a.m.

12 - - -
13 (Discussion held off the
14 record.)

15 - - -
16 MR. DuPONT: I'm going to pass
17 the witness for now. I may have some
18 questions after you folks are done.

19 VIDEO TECHNICIAN: We're
20 beginning videotape number two of the
21 deposition of Mr. John Masaitis.
22 We're going back on the record at
23 11:28 a.m.

24 Counsel, you may proceed.

25 BY MR. RILEY:

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01 JOHN P. MASAITIS

02 Q. Mr. Masaitis, Jim Riley
03 representing Radiator Specialty Company. I
04 want to explore this phrase, exposed to
05 benzene a little bit. Do you know one way or
06 the other whether benzene is part of the air
07 that we breathe?

08 A. Benzene is a naturally
09 occurring material.

10 Q. How does it occur?

11 A. Well, it can occur, say, from
12 forest fires, volcanos. It's present in the
13 earth. For example, when -- down here in
14 Florida, when we have what we call controlled
15 burns, where they would burn the brush on
16 bush, small trees and all that, in all
17 probability benzene is produced. It's also
18 produced in metropolitan areas in larger
19 amounts possibly, and from the exhaust of
20 internal combustion engines. It's naturally
21 occurring in petroleum crude. It's -- it all
22 depends upon the analytical capability in
23 your sampling methods as to whether or not
24 you can determine if benzene is present in
25 the ambient air. It could be present in this

402, relevance
403, cumulative

0

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01

JOHN P. MASAITIS

02 room.)

03 Q.) Let's talk about a product

04 that's in use today, gasoline. Does gasoline

05 today contain benzene or not?

06 A.) As I was preparing for this

07 deposition -- I know years ago they used to

08 have the benzene as an anti knock to

09 gasoline. And also in the winter months, it

10 seemed that they would have -- more benzene

11 would be added. But I think through the

12 years they try to avoid actually adding it.

13 But, I don't know whether or not the gasoline

14 refining process is adequate enough to remove

15 all trace amounts of benzene from the crude.

16 Q.) So back in the sixties and

17 seventies, do you know whether or not

18 gasoline contained benzene as an additive?

19 A.) In the sixties and seventies --

20 MS. KEEHNER: Object to form.

21 THE WITNESS: -- yes, it

22 contained significantly more than it

23 does now.)

24 BY MR. RILEY:

25 Q.) And you mentioned coal. Back

402, relevance

403, cumulative

Plaintiffs MiL on post
exposure uses of
benzene

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01 JOHN P. MASAITIS

02 in the sixties, if I was up in Sugar Notch,
03 Pennsylvania, walked down into the cellar in
04 January, opened up the furnace to throw coal
05 on the fire, would that burning coal be
06 giving off benzene or not?

07 A. It's very possible it was, yes.

08 Q. And, in fact, doesn't the coke
09 process where these byproducts are
10 manufactured, doesn't that involve burning
11 off the coal and then the byproducts go in,
12 and toluene, xylene and benzene are
13 byproducts of that process?

14 A. Yes. There are small amounts
15 of the benzene liberated during the coking
16 process.

17 Q. Now, speaking of benzene,
18 because you made mention that benzene is a
19 widely used saveable chemical even today, in
20 the year 2011, was that true back in the
21 sixties and seventies and the eighties and
22 the nineties?

23 A. Yes.

24 Q. And if we're going to compare,
25 say, benzene to raffinate, which would be the

402, relevance
403, cumulative

O

402/403, relevance

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202/403, relevance

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01 JOHN P. MASAITIS
02 more valuable chemical back in the sixties
03 and seventies, from a commercial standpoint?

04 A. Well benzene, you know, would
05 be much more valuable.

06 Q. Well, would it make sense then
07 for any kind of chemical company to try to
08 get as much benzene out of the raffinate as
09 possible purely for business reasons?

10 A. Well, the raffinate was the end
11 of the process. And the extraction of the
12 more saleable compounds of benzene, toluene
13 xylene and -- yes, that's the -- you develop
14 the process to extract the benzene, toluene
15 and xylene as much as you could from the
16 light oil. And whatever you couldn't get out
17 was contained in the raffinate. That's why
18 that's -- really it's a byproduct of the --
19 of that process.)

20 Q. Now, the documents that I've
21 seen indicate that raffinate was shipped to
22 my client by tank car in excess of 10,000
23 gallons at a time. Is that correct or not
24 from what you reviewed?

25 A. From my knowledge, yes. The --

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01 JOHN P. MASAITIS
02 well, actually, the only way we shipped from
03 Clariton and our other facilities, byproduct
04 plants, was in -- by barge, river barge,
05 railroad car, or tank truck, you know,
06 comparable to the tank trucks that you see at
07 filling stations delivering gasoline.
08 They're the only ways that we ship materials.

09 Q. Just as a curiosity, this
10 product, Liquid Wrench, have you ever used it
11 yourself?

12 A. Oh, I used it quite a bit.

13 Q. For how long did you use it?

14 A. Well, I started working on
15 automobiles when I purchased my first 1936
16 Ford. And I've been still working on
17 automobiles. I use the Liquid Wrench, WD40,
18 all of those materials. And I buy them by
19 the gallon.

20 Q. Do you still use it today?

21 A. Yes.

402/403, relevance

5

22 Q. I pass the witness. Thank you,
23 sir.

24 A. You're welcome.

25 MR. SYKES: Does anybody else

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 have any questions for Mr. Masaitis
03 before I ask questions on behalf of
04 U.S. Steel?
05 (No response.)
06 BY MR. SYKES:
07 Q. Mr. Masaitis, let me ask a few
08 preliminary questions to get us on the same
09 page. Going back to Mr. Krem specifically,
10 you read his deposition; correct?
11 A. Yes.
12 Q. And the relevance of his
13 testimony to U.S. Steel as to his use of
14 Liquid Wrench?
15 A. Yes.
16 Q. And kind of getting to the
17 point, you know from your review of sale
18 records that U.S. Steel sold raffinate to
19 Radiator Specialty Company from 1960 to early
20 1978?
21 MR. DuPONT: Objection to form.
22 THE WITNESS: That is correct.
23 BY MR. SYKES:
24 Q. Have you reviewed sales records
25 that substantiate that period of sale from

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 1960 to 1978?

03 A. Yes, I have.

04 Q. And, in fact, we provided those

05 to you in the materials that Mr. DuPont

06 marked as Exhibit 1 that our law firm

07 delivered to you to prepare for this

08 deposition. Correct?

09 A. Yes.

10 Q. Okay. (Mr. DuPont asked you a

11 number of questions about U.S. Steel's

12 knowledge of hazards of benzene and documents

13 that were produced as part of our document

14 production this morning. Do you recall that

15 generally?)

16 A. Yes, I do.

17 Q. I want to ask you about a

18 document that he chose not to ask you about.

19 MR. SYKES: And, Andrew, do you

20 have the exhibit stickers?

21 MR. DuPONT: Yes, I do.

22 - - -

23 (Whereupon the document was

24 marked, for identification purposes,

25 as Masaitis Exhibit Number 11.)

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 - - -

03 BY MR. SYKES:

04 Q. We'll mark this document as

05 Masaitis Number 11. It bears Bates Number

06 USS 16. If you would take a moment, Mr.

07 Masaitis. Do you recognize this document?

08 A. Yes, I do.

09 Q. For the record, this is

10 entitled, "Safety Data Sheet for Raffinate"

11 on the cover page. Did I read that

12 correctly?

13 A. Yes.

14 Q. And do you see a date on the

15 top righthand corner?

16 A. Yes, I do.

17 Q. Would you identify that for the

18 record, please?

19 A. It looks like 5/15/67.

20 Q. Correct. Now, this is a six or

21 seven page document, is it not?

22 A. Yes.

23 Q. In the sixties, did you all

24 prepare documents like this with the word

25 processing programs we enjoy today?

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 (A.) (No.)

03 (Q.) (How would this have been

04 prepared?)

05 (A.) (Well, being familiar with this

06 document, it's apparent that, you know, there

07 was a significant amount of research went

08 into it. It was laid out in a logical

09 manner. It discusses the various effects of

10 the product, the properties and

11 characteristics, the health effects, warning

12 properties, fire explosive, engineering

13 controls. It talks about the static

14 electricity, employee safety, eye protection,

15 respiratory protection, body, skin and hand

16 protection, fire fighting, handling and

17 storage, tank and equipment cleaning,

18 repairs, medical management, emergency care.

19 So it covers pretty much all the areas that I

20 think someone would be interested in. And

21 it's also a document that at that time would

22 have had to be hand typed.)

23 (Q.) (Would this represent many man

24 hours of work?)

25 (A.) (I -- significant amount of man

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Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 hours.)

03 Q. I'll ask you not about all

04 parts of this document, but a couple

05 sections. If you would turn to the page

06 Bates numbered USS 18, please.)

07 A. (Complying with request.)

08 Q. It's page two of the document

09 under the heading "Health". About halfway

10 through that paragraph, would you read the

11 portion beginning with, "Acute exposure" into

12 the record for us"?)

13 A. "Acute exposure to its vapors

14 will cause headache, confusion and tingling

15 sensations; severe cases, lost consciousness.

16 Death may occur from paralysis of the

17 breathing center. It will also cause

18 irritation of eyes, skin and mucous

19 membranes. Chronic exposure to low

20 concentrations of the vapors can cause severe

21 damage to the blood-forming structures."

22 Q. Okay. If you would turn to the

23 next page, under the heading, "Employee

24 Safety."

25 A. Yes.)

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 Q. (And throughout this section
03 there are guidances provided by USS Chemicals
04 as to eye protection, respiratory protection,
05 body, skin and hand protection; correct?)

06 A. Yes.

07 Q. (If you turn to the page Bates
08 numbered USS 21 under the heading medical
09 management. Would you read the first
10 sentence into the record, please?)

11 A. "The toxicity of raffinate is
12 principally due to its benzene content."

13 Q. (And was that consistent with
14 your understanding?)

15 A. Yes.

16 Q. (And on the next page, that's
17 Bates numbered USS 22, would you read the
18 first sentence at the top of the page into
19 the record, please?)

20 A. "Repeated exposures to low
21 vapor concentrations over a period of time
22 can result in a chronic poisoning."

23 Q. (Would you read the next two
24 sentences, please?)

25 A. "Such reaction depends on the

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS
02 individual's susceptibility, the
03 concentration of the fumes during exposure
04 and the duration of those exposures.
05 Headache, drowsiness, excessive fatigue and
06 dizziness are the early symptoms. In severe
07 cases the bone marrow is affected so as to
08 produce blood cell deficiencies that can
09 result in death."

10 Q. Mr. Masaitis, we didn't see the
11 word cancer in this document, did we?

12 A. No.

13 Q. But we did see that this
14 raffinate data sheet referenced the
15 possibility of death; correct?

16 A. Yes.

17 Q. And was, to your understanding,
18 Radiator Specialty U.S. Steel's principal
19 customer of raffinate?

20 A. Yes.

21 Q. And do you have an
22 understanding of whether or not it was U.S.
23 Steel's practice, in this time period of the
24 sixties into the seventies, to send safety
25 data sheets with its chemicals to its

611, non-responsive

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Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 purchasers?

03 A. There were certain materials
04 that we produced Material Safety Data Sheets
05 for. Of course, here is proof that raffinate
06 was one.)

611, non-responsive

①

07 Q. Was it the company's practice
08 to deliver these safety data sheets to its
09 customers?

602, foundation
speculation

10 A. Well, typically the major
11 function of the Material Safety Data Sheet is
12 to communicate to people outside the
13 corporation, to, you know, your customer. So
14 I would say that this publication was put
15 together to be sent to our customers.)

①

16 - - -

17 (Whereupon the document was
18 marked, for identification purposes,
19 as Masaitis Exhibit Number 12.)

20 - - -

21 BY MR. SYKES:

22 Q. I've marked this as Exhibit
23 Masaitis 12. This is Bates Number USS 15.

403, relevance,
confusion, not
raffinate

24 Mr. Masaitis, if you would take
25 a moment and glance at this cover letter.)

①

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Masaitis, John

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01

JOHN P. MASAITIS

02 It's on USS Chemicals letterhead. It's a
03 division of United States Steel Corporation
04 in the top lefthand corner. It is signed by
05 William G. Souder, Manager of Light Oil
06 Products.)

07 A. Yes.)

08 Q. And without reading this
09 letter, the second paragraph -- the first
10 paragraph has a reference to the)

11 Manufacturing Chemists Association and the
12 use of chemical safety data sheets and the
13 like. And then the second paragraph says,
14 "Enclosed is a copy of a safety data sheet
15 for each of these products for your own use
16 and one copy for the receiving locations to
17 which we ship. We would appreciate your
18 sending a copy to the appropriate supervisor
19 at each such location. If you need
20 additional copies, we shall be happy to
21 provide them to you.")

22 Is this the type of letter that
23 you're familiar with that U.S. Steel would
24 have sent along with the safety data sheets?)

25 A. Yes.)

403, relevance, and
confusion of the issues
not raffinate
611, leading

O

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Masaitis, John

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01 JOHN P. MASAITIS

02 Q. And is this Mr. Souder, Manager 611, leading
03 of Light Oil Products, was that the division
04 that made products like benzene and raffinate
05 for U.S. -- for the USS Chemicals Division of
06 United States Steel Corporation?

07 A. Yes.

08 MR. SYKES: Could we go off the
09 record for a minute?

10 VIDEO TECHNICIAN: We're going
11 off the record at 11:44 a.m.

12 - - -

13 (Discussion held off the
14 record.)

15 - - -

16 VIDEO TECHNICIAN: We're back on
17 record at 11:44 a.m., counsel may
18 proceed.

19 MR. SYKES: I'll tender the
20 witness. Thank you, Mr. Masaitis.

21 THE WITNESS: You're quite
22 welcome.

23 BY MR. DuPONT:

24 Q. Sir, do you have specific data
25 on how much benzene U.S. Steel sold versus

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 how much raffinate it sold?
03 A. Totally?
04 Q. Yes.
05 A. No.
06 Q. And do you have the specific
07 data as to the cost of benzene versus the
08 cost of raffinate during the 1960s and 1970s?
09 A. No, but I'm aware that the
10 benzene, toluene, xylene plant was
11 constructed to extract benzene, toluene,
12 xylene from light oil and that the end
13 product, the byproduct, what was left after
14 this extraction was raffinate.
15 Q. But you don't know how much
16 benzene costs versus how much raffinate costs
17 in the 1960s and 1970s; is that correct?
18 A. Well, I'm sure there was a
19 significant difference because we didn't
20 build a plant to make raffinate.
21 Q. Well, do you know the cost of
22 benzene and the cost of raffinate in the
23 1960s and the 1970s?
24 A. No.
25 Q. Sir, you're not suggesting that

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 the way coal was burned to heat a house is at
03 the same temperature and the same method the
04 way coal was burned to make coke for a steel
05 operation, is it?

06 A. Would you repeat that, please?

07 Q. Sure. You're not suggesting
08 that the temperature at which coal was burned
09 and the method used to burn coal was the same
10 for heating a house as it is for producing
11 coke and chemicals in a steel plant, is it?

12 A. No. I -- they're two different
13 operations, but it's still a matter of
14 combustion. And, as we said, for making
15 coke, it's the -- let me see. It's the
16 destructive distillation of the coal, but
17 it's an extraction.

18 Q. Sir, you mention that you use
19 Liquid Wrench and WD40 today?

20 A. Uh-huh.

21 Q. There's no more benzene as an
22 ingredient to Liquid Wrench, is there, today?

23 A. No, I don't think there is.

24 Q. Okay. Did WD40 ever have
25 raffinate in it or benzene as an ingredient?

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS
02 A. I don't think so. I don't
03 know.
04 Q. Are you aware of any other
05 penetrating oils that use benzene as an
06 ingredient, other than Liquid Wrench?
07 MR. RILEY: Objection to form.
08 THE WITNESS: What was the
09 question?
10 BY MR. DuPONT:
11 Q. Sure. Are you aware of any
12 penetrating oils, other than Liquid Wrench,
13 that use benzene as an ingredient?
14 MR. RILEY: Objection to form.
15 THE WITNESS: No, but it
16 wouldn't surprise me that others did
17 use benzene at the time that benzene
18 was being used in Liquid Wrench.
19 BY MR. DuPONT:
20 Q. But you don't know that they
21 did though?
22 A. No.
23 Q. Correct?
24 A. No.
25 Q. Sir, do you have a letter that

Obj:
402
403
Form

0

MASAITIS, JOHN
P - (KREN) 12/21/11

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 shows that this Material Safety Data Sheet
03 for raffinate, which incidentally, when I
04 took your deposition before, in
05 November 2010, I did ask you about, whether
06 this Material Safety Data Sheet for raffinate
07 was specifically provided to Radiator
08 Specialty Company for the date that it was
09 provided?

10 A. No, I don't have any letter
11 that conveyed this Material Safety Data
12 Sheet. But as I was sitting here looking at

13 these two exhibits, it's amazing that, you
14 know, when you -- when you compare this type
15 to this type, it's like it was done on the
16 same typewriter.)

611, non-responsive
602, speculation

17 Q. Sir, are you going to tell us
18 really that that document, the Material
19 Safety Data Sheet and letter, was done on the
20 same typewriter?

21 A. No, I'm not going to say that.
22 But I just say looking at it, I mean, it's
23 just astounding the comparison between the
24 two documents and the type. Somebody could
25 make that determination.)

611, non-responsive
602, speculation

MASAITIS, JOHN
P - (KREN) 12/21/11

Transcript of Masaitis, John

Obj:
To prior
deposi
tions
(Subjec
t of
MIL)

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Q

O

Masaitis, John

Rhyme Trial Master

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01 JOHN P. MASAITIS

02 Q. And U.S. Steel doesn't have any
03 document that shows that it specifically
04 provided to Radiator Specialty Company a
05 safety data sheet for raffinate; correct?

06 A. I have never seen any letter
07 conveying this Material Safety Data Sheet.

08 Although, as I said, in here, in this letter
09 they -- we talk about sending out the
10 Manufacturers Chemists Association chemical
11 safety data sheet for benzene, toluene and
12 xylene because they had already existed.
13 They were -- MCA had produced them. But
14 there was none for raffinate. So I think
15 that's why this was produced, to go along
16 with this letter as a representative of the
17 product raffinate that it was selling.

611, non-responsive
602, foundation

○

18 MR. DuPONT: Objection, move to
19 strike.

20 BY MR. DuPONT:

21 Q. True or false?

22 A. Do I have that letter, no.

23 Q. Okay. U.S. Steel has no letter
24 to show that it actually sent this safety
25 data sheet for raffinate to Radiator

MASAITIS, JOHN
P - (KREN) 12/21/11

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS

02 Specialty Company; correct?

03 A. No, we have no letter saying to

04 Radiator Specialty Company, here is a

05 Material Safety Data Sheet for raffinate.

06 Q. Okay. Sir --

07 A. That I have seen.

08 Q. Sir, do you have any

09 information, or are you able to specifically

10 say how much benzene exposure Mr. Krem had

11 from gasoline versus Liquid Wrench?

12 A. No, I can't quantify it. But

13 just looking at how he described using the

14 gasoline in this Coca Cola parts cleaner, I'm

15 very familiar with those type of Coca Cola

16 coolers because I've seen several of them

17 used the same way. A bifold type lid that

18 comes together, about the size of a small

19 refrigerator. And typically they would pour

20 material into it and do their degreasing.

21 Whereas with Liquid Wrench, Mr. Krem

22 described how he applied the Liquid Wrench

23 through a little hand held pump can onto a

24 bolt that was frozen. So I would say that

25 the exposures, you know, which -- could have

MASAITIS, JOHN
P - (KREN) 12/21/11

Transcript of Masaitis, John

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01 JOHN P. MASAITIS

02 been substantially different.

03 Q. Are you going to say that Mr.

04 Krem's exposure to benzene from gasoline was

05 sufficient alone -- that exposure alone was

06 sufficient to cause his myelodysplastic

07 syndrome and acute myelogenous leukemia?

08 MS. KEEHNER: Objection to form.

09 THE WITNESS: No, you know, I'm

10 not a toxicologist or an

11 epidemiologist, but just looking at

12 the operations, I think that his

13 exposure to the materials released

14 from the gasoline probably would have

15 been more so than released from the

16 Liquid Wrench.

17 BY MR. DuPONT:

18 Q. And, sir, the fact that benzene

19 is still produced today, that doesn't negate

20 the fact that benzene causes cancer, does it?

21 A. No. I'm not arguing that

22 benzene doesn't cause cancer, no.

23 Q. So just because benzene might

24 be manufactured for certain specialized

25 operations today doesn't mean that it's a

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 safe chemical, does it?

03 A. Well, I don't think there's
04 anything specialized about utilizing benzene
05 to produce numerous plastics and all the
06 rubber tires that are used in the world
07 through various applications in automobiles,
08 trucks, tractors, airplanes. I don't know if
09 that's sophisticated or inter --

10 Q. Benzene is not used for
11 cleaning parts in garages today, is it?

12 A. No. It's not recommended to be
13 used for that purpose.

14 Q. That's because we know today
15 it's -- strike that. I didn't mean to cut
16 you off. Are you done?

17 A. No, that's all right. No, it's
18 because of its toxicity and, of course, now
19 there are much less expensive materials that
20 would do the job.

21 Q. All right. That's all the
22 questions I have.

23 - - -

24 BY MR. RILEY:

25 Q. Since we've already talked

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 about --

03 (Discussion held off the
04 record.)

05 BY MR. RILEY:

06 Q. Is it a fair statement to say
07 that when you have a customer for raffinate
08 that's getting a tank car delivery in excess
09 of 10,000 gallons, that this Exhibit 11
10 safety data sheet for raffinate, at least the
11 intent was to help the customer monitor the
12 workplace manufacturing exposure when they're
13 getting that level of raffinate in? Is that
14 correct or not?

15 MR. DuPONT: Objection to form.

16 MR. RILEY: Hold up. What's
17 your objection, Andrew?

18 MR. DuPONT: I'm objecting to
19 the speculative nature. I'm objecting
20 to the phraseology of the question.

21 I'm objecting to the form.

22 MR. RILEY: Let me repeat it.

23 BY MR. RILEY:

24 Q. I'm trying to determine, this
25 safety data sheet for raffinate, was the

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 (intent behind this the knowledge that the
03 customer was getting tank car shipments, and
04 that this was going to be put into a
05 manufacturing facility to help with the
06 industrial hygiene measurements of the
07 workers in the facility or not?)

08 (A.) (It was meant to provide
09 information of an industrial hygiene nature,
10 a medical nature to assist our customers to
11 protect their workers' health.)

12 (Q.) (And it was made contemplating
13 that the customers were going to be getting
14 tank car deliveries of the raffinate;
15 correct?)

16 (A.) (Yes.)

17 (Q.) (That's all I have, thank you.)

18 (A.) (That's the only way we sold it,
19 in large quantities.)

611, leading, Radiator
has a shared interest
in disproving the
raffinate health hazards



20

- - -

21 BY MR. SYKES:

22 Q. One follow-up question, Mr.
23 Masaitis. When Mr. DuPont was asking you
24 about the cost of benzene per unit, whether
25 it be gallon or however it was sold, versus

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 the cost per gallon of raffinate, would you
03 defer to the sales records that we have --
04 that United States Steel Corporation has to
05 assess the market price between those two
06 chemicals?

07 A. Oh, definitely.

08 Q. Thank you.

09 VIDEO TECHNICIAN: Anybody else?

10 MR. DuPONT: No further
11 questions.

12 VIDEO TECHNICIAN: This
13 concludes the videotape deposition of
14 John Masaitis. We're going off the
15 record at 11:55 a.m.

16 - - -

17 (Witness excused.)

18 - - -

19 (Deposition concluded at 11:57
20 a.m.)

21

22

23

24

25

Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS

02 C E R T I F I C A T E

03

04

05 I, Brigitte A. Strain, a Notary Public,

06 do hereby certify that the foregoing

07 deposition of JOHN P. MASAITIS, was taken

08 before me, pursuant to notice, at the time

09 and place indicated; that said deponent was

10 by me duly sworn to tell the truth, the whole

11 truth, and nothing but the truth; that the

12 testimony of said deponent was correctly

13 recorded in machine shorthand by me and

14 thereafter transcribed under my supervision

15 with computer-aided transcription; that the

16 deposition is a true record of the testimony

17 given by the witness; and that I am neither

18 of counsel nor kin to any party in said

19 action, nor interested in the outcome

20 thereof.

21 WITNESS my hand and official seal this

22 7th day of January, 2012.

23

24

25

26

27 _____
Brigitte A. Strain

28 Notary Public

29

30

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Transcript of Masaitis, John

Masaitis, John

Rhyne Trial Master

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01 JOHN P. MASAITIS
02 INSTRUCTIONS TO WITNESS
03 Please read your deposition over
04 carefully and make any necessary corrections.
05 You should state the reason in the
06 appropriate space on the errata sheet for any
07 corrections that are made.
08 After doing so, please sign the errata
09 sheet and date it.
10 You are signing same subject to the
11 changes you have noted on the errata sheet,
12 which will be attached to your deposition.
13 It is imperative that you return the
14 original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.
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01 JOHN P. MASAITIS

02 - - - - -

03 E R R A T A

04 - - - - -

05 PAGE LINE CHANGE

06 - - - - -

07 Reason for

08 Change: _____

09 - - - - -

10 Reason for

11 Change: _____

12 - - - - -

13 Reason for

14 Change: _____

15 - - - - -

16 Reason for Change:

17 _____

18 - - - - -

19 Reason for Change:

20 _____

21 - - - - -

22 Reason for Change:

23 _____

24 - - - - -

25 Reason for Change:

26 _____

Transcript of Masaitis, John

Masaitis, John

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01 JOHN P. MASAITIS

02

03 ACKNOWLEDGMENT OF DEPONENT

04 I, _____, do

05 hereby certify that I have read the foregoing

06 pages __ to __ and that the same is a

07 correct transcription of the answers given by

08 me to the questions therein propounded,

09 except for the corrections or changes in form

10 or substance, if any, noted in the attached

11 Errata Sheet.

12

13 _____

14 DATE

SIGNATURE

15

16 Subscribed and sworn to before

17 me this

18 _____ day of _____, 2012.

19

20 My commission expires:

21 _____

22

23 _____

24 Notary Public

25

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Transcript of Masaitis, John

Exhibit 6

Transcript Report

Mehlman, Myron

Transcript of Mehlman, Myron

Full Transcript Report

Designation Legend

- US Steel Deposition Designation Mehlman
- MEHLMAN, MYRON A. 12-11-03 - Combined Designations 9-1-20

Transcript of Mehlman, Myron

Mehlman, Myron

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Page 1

01 IN THE CIRCUIT COURT
02 THIRD JUDICIAL CIRCUIT
03 MADISON COUNTY, ILLINOIS
04
05 RONALD E. AWALT, and *
06 RY AWALT *
07 *
08 * No. 02-L-956
09 * (BENZENE) *
10 ALLIED SIGNAL CORPORATION,* ET AL *
11 * * * * *
12
13 ORAL AND VIDEOTAPED DEPOSITION OF
14 MYRON A. MEHLMAN, Ph.D.
15 December 11, 2003
16
17 * * * * *
18 Oral and Videotaped Deposition of MYRON A. MEHLMAN,
19 Ph.D., produced as a witness at the instance of the
20 Plaintiffs, and duly sworn, was taken in the
21 above-styled and numbered cause on the 11th day of
22 December 2003, from 10:36 to 12:47 p.m., before Tonya
23 Jackson, CSR, RPR, in and for the State of Texas,
24 reported by machine shorthand, at. Moody Gardens, 7 Hope
25 Boulevard, Galveston, Texas, pursuant to the Illinois
26 Rules of Civil Procedure and the provisions stated on
27 the record or attached hereto.

Transcript of Mehlman, Myron

Mehlman, Myron

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01 Appearances:

02

03 R THE PLAINTIFFS:

04

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19 Mr. Adam E. Miller

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21 190 Carondelet Plaza, Suite 600 St. Louis, Missouri 63105

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23 VIDEOTAPED BY:

24 Ms. Warriene Flatt Legal Images

25

26

27

28

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01 PROCEEDING S:
02 (EXHIBITS 1 THROUGH 4 MARKED)
03 THE VIDEOGRAPHER: We're on the record at
04 10:36 a.m.
05 (WITNESS SWORN)
06 THE REPORTER: State your agreement for
07 the record.
08 MR. HOBSON: Take it pursuant -- this
09 will be the Illinois Rules of Civil Procedure.
10 MYRON A. MEHLMAN, Ph.D.,
11 having been first duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. HOBSON:

14 Q. Would you introduce yourself, please, sir.

15 A. My name is Myron A. Mehlman, M-E-H-L-M-A-N.

16 Q. And it's Dr. Mehlman, I believe.

17 A. Yes.

18 Q. And you have a -- what degree for the
19 doctorate?

20 A. I have a Ph.D. degree from Massachusetts
21 Institute of Technology.

22 Q. Dr. Mehlman, you and your wife have two
23 homes -- one in Princeton, New Jersey, and one here in
24 Galveston, Texas -- correct?

25 A. Yes.

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01 Q. And we're here in Galveston to take your
02 deposition today.

03 A. Yes.

04 Q. It's my knowledge that you used to work for
05 Mobil; is that right?

06 A. Yes.

07 Q. Would you give us the years of your employment
08 with Mobil, please.

09 A. From 1977 through 1969, I was director of
10 toxicology and environmental health. Then I became
11 director of toxicology and environmental health,
12 sciences laboratory manager, both
13 toxicology/laboratory.

14 Q. When you were working with Mobil, did you have
15 occasion to deal with the topic of benzene?

16 A. Yes. I was pretty much responsible for
17 measuring benzene exposure with Mobil employees and its
18 affiliates as well as identify the content of benzene
19 in various Mobil products -

20 Q. All right.

21 A. -- and products that were used by Mobil.

22 Q. And during your stint with Mobil, did you have
23 occasion, then, to receive and send correspondence
24 within the corporation?

25 A. Yes.

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Objection: 802, 602, 701, and 402 - Entire Page

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01 Q. Doctor, I've got some documents that we've
02 marked as attachments to your deposition. They are
03 Exhibits 2, 3, and 4. Could I ask you to take those
04 sequentially, tell us what each one of them is? Let's
05 start with Exhibit No. 2, please.

06 A. Exhibit 2 is a memo to Paul Carl, with copies
07 to number of individuals in the laboratory and in
08 Beaumont refinery and myself as well as to William
09 Selfridge, who was in charge of employee relationship
10 for Mobil Oil Corporation. This exhibit describes -
11 this is a memo from Hergrueter, and it refers to a memo
12 from T.W. Gregg to me of October 6th -- this is 1977 -
13 where we requested that Liquid Wrench be analyzed for
14 the content of benzene as well as all other Mobil
15 products.

16 Q. All right, sir. And in this Exhibit 2 does it
17 indicate that you would have received a copy of this at
18 the time?

19 A. I did receive a copy of this at that time.

20 Q. All right, sir. Can you tell us -- identify
21 Exhibit 3, please.

22 A. Exhibit 3 is analysis of Liquid Wrench,
23 showing that it contains 30 percent of benzene.

24 Q. All right, sir. And Exhibit 4?

25 A. This is a memo concerning Liquid Wrench

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Continuing objection: Entire page

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01 benzene content, showing the concentration of benzene

02 in Liquid Wrench by J.L. Wescoat.

03 Q. And the date on that memo, please?

04 A. October 12, 1977.

05 Q. And the date on Exhibit 3 was what, sir?

06 A. 10/5/77.

07 Q. When you left Mobil's employ, did you take
08 some documents that had been in your files at Mobil
09 with you or copies of them?

10 A. Yes.

11 Q. Can you tell me whether or not these documents
12 that are marked as Exhibits 2, 3, and 4, were those
13 documents -

14 A. Yes.

15 Q. -- part of them?

16 So, let me ask you if Exhibits 2, 3, and 4
17 have been continuously in your possession since you
18 worked for Mobil?

19 A. Since 1977.

20 Q. And is there any reason for you to think that
21 these are not true and correct copies of the originals?

22 MR. MILLER: Object to the form.

23 A. They're absolutely true and correct copies of
24 original documents.

25 Q. (BY MR. HOBSON) Is there any reason for you,

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Continuing objection - through line 5

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01 Dr. Mehlman, to question the authenticity of these
02 documents?

03 A. No. They were authentic because I was at the
04 meeting where the subject matter was discussed, a
05 number of meetings.

06 MR. HOBSON: I pass the witness.

07 MR. MILLER: Why don't you go.

08 EXAMINATION

Objection: 602 - entire page

09 BY MR. LYNN:

10 Q. Dr. Mehlman, my name is Lawrence Lynn. I'm
11 here representing Radiator Specialty Company. I have
12 some questions for you.

13 Can you tell us what the purpose was for
14 Mobil's testing of Liquid Wrench?

15 A. When Occupational Safety & Health
16 Administration initiate emergency temporary standard of
17 1 part per million T.W.A., now known as T.L.V., it was
18 my responsibility to identify exposure levels of Mobil
19 employees in all the facilities as well as to identify
20 the concentration of benzene in all Mobil products as
21 well as any of the products that Mobil used. We have
22 done so on hundreds and hundreds of products, including
23 Liquid Wrench.

24 Q. In the course of making the determination as
25 to what benzene content, if any, may have been in these

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Continuing objection: 1-11

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01 products, what was the procedure that was going to be
02 used?

03 A. We used Mobil technical services analytical
04 laboratory since my facility was not yet set up and
05 they conducted comprehensive gas chromatographic
06 analysis on all products to identify -- and they have
07 identified for us, means for toxicology and medical
08 department -- the concentration of benzene products
09 and, in fact, I recommended because of high
10 concentration of benzene that use of Liquid Wrench be
11 discontinued and apparently it appears in the memo.

12 So -

13 Q. Okay. Are you done with that answer?

14 A. Yes.

15 MR. LYNN: Object to the nonresponsive
16 portion.

17 A. I'm sorry. I didn't quite, then, understand
18 your question. What's the purpose? I thought I
19 explained.

20 Q. (BY MR. LYNN) Okay. Well, you talked about
21 the purpose earlier; and then we were talking about the
22 procedure.

23 A. Procedure was use of our analytical
24 facility -- sophisticated, entirely competent
25 analytical facility that can accurately determine

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602

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Continuing objection: 602 - Entire page

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01 benzene concentration in petroleum product or any other
02 product.

03 Q. Where was the facility located that was going
04 to do this testing?

05 A. In Paulsboro.

06 Q. Before I get to the Paulsboro testing, was
07 there any discussion of making inquiries with the
08 manufacturers of any products to see if they had done
09 any testing to find out if there was any benzene or the
10 concentration of any benzene in products being used by
11 Mobil?

12 A. Not that I recall. Besides, that wouldn't
13 have been my responsibility to go to manufacturers and
14 inquire.

15 Q. The Paulsboro lab, is that in New Jersey?

16 A. In New Jersey where -- within the Paulsboro
17 refinery.

18 Q. Did you personally take part in any of the
19 testing with any of these products?

20 A. No. I asked that they be tested.

21 Q. Can you describe for us your background and
22 qualifications with respect to testing procedures?

23 A. Training, I had some analytical chemistry,
24 organic chemistry, number of what -- physical
25 chemistry. I had a group of industrial hygienists that

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01 reported to me for a while, for about a year; and we
02 had some equipment later on in the laboratory that we
03 could do our own testing that was around 1980s. I was
04 sufficiently briefed at that time about methodology and
05 procedures that were used in analyze various
06 hydrocarbon components.

07 Q. Do you have any type of certifications or
08 degrees in testing?

09 A. No, I do not. I had individuals who worked
10 for me that had certification in various type of
11 testing.

12 Q. To break it down to layperson terminology, I
13 guess, do you have the qualifications to determine
14 whether or not the technicians in the lab are
15 performing tests properly?

16 A. Absolutely.

17 Q. And what is the basis for that?

18 A. I use a positive control and a negative
19 control, and we know a percent of recoveries. The
20 reason we went inside, because the testing in outside
21 laboratories was inadequate.

22 Q. Tell me what you mean by outside laboratories
23 being inaccurate.

24 A. Contract laboratories. When samples sent to
25 contract laboratories, I got variability in results,

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01 including of spike samples. So, immediately terminate
02 using of contract laboratories and went in-house where
03 results were reproducible. High recovery of samples
04 that we spiked, usually 95 to 99 percent or 101
05 percent; and blanks came out blank.

06 Q. Now, for a particular test, a particular
07 individual test, how do you make a determination as to
08 whether or not that particular test was accurate?

09 A. I rely on the quality of testing of Mobil
10 analytical laboratory, which was excellent. They had
11 many years of experience, and results that we got back
12 on thousands of samples were accurate.

13 Q. Would you expect results received from that
14 laboratory to be reproducible?

15 A. I would expect it, yes.

16 Q. Are there any protocols that exist for the
17 type of testing that was being done by Mobil with
18 respect to benzene?

19 A. There are protocols because Mobil routinely
20 tested for petroleum hydrocarbon, which would
21 include -- hydrocarbons, which would include benzene.

22 Q. And what are those testing protocols?

23 A. You need to ask the analytical laboratory.
24 They have them.

25 Q. So, you are not personally aware of what the

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701, & 402

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01 protocols are?

02 A. I have seen them, but I don't remember. I
03 didn't make any effort to memorize something that
04 transpired 26 years ago.

05 Q. Would there be document -- let me withdraw
06 that question.

07 Should there be documentation as to the
08 protocol being utilized for a particular test so that
09 20 years later you can determine whether or not the
10 test was properly done?

11 A. The procedure and protocol should exist.

12 Q. In what form should they exist?

13 A. I don't know. You need to find out what form
14 was -- they exist now.

15 Q. When you received test results from this Mobil
16 testing program for benzene, did you at that time
17 review any of the protocols and compare them with the
18 tests to determine whether or not the tests were done
19 properly?

20 A. I did not. I had other people do it for me.

21 Q. Who would be the other people at Mobil who
22 would have been doing those checks?

23 A. The analytical chemists, the quality control.
24 We also have quality assurance program. When needed, I
25 requested that that be checked.

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01 Q. Can you provide us with the names of any of
02 the individuals who would have been checking the
03 testing done with respect to this Liquid Wrench test
04 that the documents reflect?

05 A. The names is on the memo. You can ask any of
06 the analytical chemists.

07 Q. When was the last time you spoke with any of
08 the people whose names are on that memo?

09 A. About 14 years ago -- 15 or 16 years ago,
10 maybe longer.

11 Q. Do you recall ever discussing the particulars
12 of this test with any of the gentlemen reflected on the
13 memos?

14 A. The only thing I recall is that we had
15 discussed that the concentration of benzene was high -
16 unusually high to be used without protective equipment;
17 and it was recommended that the product be discontinued
18 in the memo, as stated. So .

19 Q. Was there any discussion of verifying the test
20 to determine whether or not it was an accurate figure?

21 A. I am certain that the levels were accurate.
22 But did I discuss it? No.

23 Q. Why are you certain that the levels are
24 accurate?

25 A. Because they haven't made any mistakes and --

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01 on analysis for benzene, and they had a lot of
02 experience. They analyzed thousands of samples.

03 Q. Well, if you haven't checked the particulars
04 of the test or reproduced the test, then how do you
05 know mistakes haven't been made?

06 A. The quality of work was very high.

07 Q. You're assuming because of the general
08 reputation and experience with the quality of the
09 laboratory's work, that each individual test done by
10 the laboratory was accurate; is that correct?

11 A. I had no reason to question this analysis.
12 However, I did look, as I pointed out, at thousands of
13 samples that the laboratory did for me -- they did
14 thousands of their own samples -- and I find them to be
15 within range and acceptable and some of the samples we
16 split in two. I had my industrial hygiene split, and
17 the results came out very close together. So, I was
18 satisfied that the quality is very high.

19 Q. Was that done with any of the tests on Liquid
20 Wrench?

21 A. I don't know. I don't know that.

22 Q. Were any tests done of Liquid Wrench in the
23 labs at Beaumont?

24 A. I specifically don't recall if they did. They
25 may, but I don't recall that.

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01 Q. Okay. Do you know whether the testing done on
02 Liquid Wrench was a qualitative or a quantitative test?

03 A. All tests were quantitative.

04 4. For a quantitative test, would you generally
05 expect that if a substance is tested, the results will
06 show all of the components in the sample?

07 A. Depends what you're looking for. You can
08 show -- you can measure all the components, or you can
09 only measure one component and report one component.

10 Q. Do you know why the other components of Liquid
11 Wrench were not reported in this instance?

12 A. We only were interested in benzene
13 concentration because we're required by law -- in
14 nineteen -- I believe it was '77 emergency temporary
15 standard -- to determine the concentration of benzene
16 in all our products, especially petroleum hydrocarbon
17 products.

18 Q. The time period when this test would have been
19 done, do you know how the results would have been
20 reported to the testing people?

21 A. I thought testing people report the results to
22 someone else.

23 Q. Probably wasn't a good question. Let me back
24 up a little bit.

25 I want to talk a little bit step by step as to

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01 how this testing would have been done, if you know at
02 all. Do you know how the sample would have been
03 obtained?

04 A. No, I do not; and if I did at that time, I
05 wouldn't recall.

06 Q. Do you know whether generally accepted
07 scientific practices generally require that data be
08 maintained as to a sample -- where it came from,
09 information about that sample -- if a test is going to
10 be utilized for a scientific purpose?

11 A. We followed that practice on our benzene
12 samples. We had a good recordkeeping procedure and
13 documentation.

14 Q. So, do you believe that Mobil should have had
15 a record as to where the sample of Liquid Wrench was
16 obtained from?

17 A. They should -- they should, but you need to
18 ask the person who obtained the sample. I don't
19 remember who did that.

20 Q. Do you know what particular formulation or
21 variation of Liquid Wrench was utilized for this test?

22 A. No. Apparently it had to be some -- from
23 petroleum products because the benzene concentration
24 was very high. Well, coal -- petroleum or a coal tar
25 pitch, something -- not tar pitch -- coal distillation

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01 products. It was -- it was much too high to have come
02 from source like naphtha -- most naphtha is
03 substantially lower -- or kerosenes.

04 MR. LYNN: Object to the
05 nonresponsiveness.

06 Q. (BY MR. LYNN) Were you aware that Liquid
07 Wrench came in different formulations?

08 MR. HOBSON: Objection, form.

09 A. To some extent, yes, there were different
10 formulations.

11 Q. (BY MR. LYNN) Do you know which one was used
12 for this test?

13 A. No, I do not.

14 Q. Do you know what the chain of custody was
15 for -

16 A. No -

17 Q. -- the sample?

18 A. -- I do not.

19 Q. This chain of custody is something that should
20 be reported in doing a proper scientific test?

21 A. I used chain of custody. I don't know if it
22 should or shouldn't be at that time period; but
23 whenever I have my people gather the sample, we have
24 chain of custody and good records.

25 Q. Have you seen any records indicating the chain

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01 custody for this Liquid Wrench sample?

02 A. I wouldn't even -- if I had seen it, I
03 wouldn't recall it.

04 Q. If there were documentation regarding where
05 the sample was obtained in the chain of custody, where
06 would that be kept?

07 A. Oh, I don't know -- I have no idea where these
08 documents now would be kept.

09 Q. At the time when you were there, was there a
10 place where they were supposed to be kept?

11 A. Yes. We had the records and we transmitted
12 the records usually to the analytical laboratory or we
13 would have kept in our files.

14 Q. Okay,

15 A. We also would show these records to the
16 laboratory so they'll know -- so they can trace where
17 the sample has been, who handle it, and so on.

18 Q. Where precisely would the records be kept?

19 A. You would have to ask Mobil. I don't know
20 where they would be kept. They were kept in filing
21 cabinets when I was there. I don't know now where they
22 would be kept.

23 Q. Where were those filing cabinets located while
24 you were there?

25 A. '77, that would have been on 42nd Street in

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01 New York City. In 1977 that's what -- in medical
02 department.

03 Q. That would be at the Mobil headquarters in
04 New York?

05 A. That's right, forty-two forty -- I don't
06 remember exactly the number anymore.

07 Q. Have you seen any documentation as to whether
08 or not there was any possibility of the sample being
09 contaminated prior to testing?

10 A. I haven't seen any.

11 Q. Do you know whether any determination was made
12 as to whether or not the sample that was tested was a
13 typical sample of any formulation of Liquid Wrench?

14 A. I don't recall that.

15 Q. Okay. Do you know what testing equipment was
16 used to perform the test?

17 A. I don't recall this now. Usually gas
18 38 chromatographs.

19 Q. Did the gas chromatograph need to be
20 calibrated prior to testing?

21 A. It should be, yes.

22 Q. Do you know what calibration was done of any
23 particular equipment used to test this particular
24 sample?

25 A. Since I didn't do any of that work, you need

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01 to ask the analytical chemist that did the work.

02 Q. But you have no personal knowledge of any
03 calibration that was done of the equipment, do you?

04 A. I don't recall anything specific.

05 Q. So, you can't testify under oath that the
06 machine was properly calibrated at the time of testing,
07 can you?

08 A. All I can testify is that these are authentic
09 documents. We measured that along with hundreds of
10 other products. That's all I can say. And I have seen
11 them.

12 MR. LYNN: Object to the responsiveness.

13 Q. (BY MR_ LYNN) Can you testify under oath that
14 the equipment used to test the Liquid Wrench sample was
15 properly calibrated prior to testing, from your
16 personal knowledge?

17 A. I already answered that. No, I cannot.

18 Q. What would be the proper procedure for
19 calibrating the gas chromatograph?

20 A. I think you need to ask the analytical
21 chemists.

22 Q. So, you have no personal knowledge sitting
23 here today -

24 A. I do have -- excuse me. I didn't say that.
25 You need to ask; and if I do, I don't recall. It's

403,
cumulative

403,
cumulative
incomplete
question

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403,
cumulative.
waste of time
no question
asked

01 been over 26 years since I used any of the equipment or
02 been instructed or familiarize myself with that
03 equipment. You ask me questions that are not in my
04 domain.

05 Q. And that's all we're trying to establish,
06 Doctor, is what you know sitting here today and what
07 you don't know.

08 A. I answered that several times, what I know and
09 what I don't know.

10 Q. Do you know whether there are any alternative
11 types of equipment that can be used to measure benzene
12 content in a sample of a product such as Liquid Wrench
13 other than a gas chromatograph?

14 A. There are alternatives. I don't recall what
15 they are.

16 Q. Do you know what the relative advantages or
17 disadvantages are of a gas chromatograph as opposed to
18 a different type of equipment that might be used for
19 the test?

20 A. A gas chromatograph is more precise. You can
21 get a more accurate analysis. Can use -- you can also
22 get at the same time many other components if you
23 choose so.

24 Q. Are there issues, when using a gas
25 chromatograph, as to a differentiation between benzene

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01 and cyclohexane?

02 A. I wouldn't recall. I know cyclohexane was
03 analyzed also in some products, but the issue isn't -
04 well, there may be time of retention; but I don't
05 recall at this time.

06 Q. Are you aware of whether or not there was any
07 analysis done to determine whether or not it was
08 benzene or cyclohexane that was being detected in the
09 test that's reflected in the documents you've brought
10 us here today?

11 A. I don't think that was an issue. The analysts
12 were -- they knew what they were doing. They had been
13 doing it for many decades, and they're highly
14 professional and experienced chemists that did the
15 analysis.

16 MR. LYNN: Object to the responsiveness.

17 Q. (BY MR. LYNN) Are you aware at all of any
18 issues that can arise when doing a test with a gas
19 chromatograph as to difficulties in distinguishing
20 between cyclohexane and benzene?

21 A. I don't recall at this point.

22 Q. Do you recall ever having any discussions with
23 anyone at Mobil or the labs about confirming whether or
24 not what was being reported as benzene was a benzene
25 result as opposed to cyclohexane?

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01 A. There was always a standard that's run that
02 could compare the specific substance to the one that's
03 being analyzed. I do recall that.

04 Q. Do you recall any questions at all regarding
05 cyclohexane in regard to this test?

06 A. I don't recall that.

07 Q. Do you know whether any additional tests are
08 needed to segregate cyclohexane and benzene results
09 when using a gas chromatograph?

10 A. I don't recall that.

11 Q. If any additional tests were done, would you
12 expect that there would be documentation of those
13 tests?

14 A. I would expect that there would be.

15 Q. As of the time that you were at Mobil in 1977,
16 where would those documents be kept?

17 A. Would be in a -- at -- in the files of the
18 analytical laboratory.

19 Q. Do you know what the retention policies were
20 with respect to documents at either Mobil's
21 headquarters or the analytical lab for keeping
22 documents for this type of testing?

23 A. I -- the retention policy, if I recall
24 correctly, was to keep -- at least the toxicological
25 documents that I can speak to, were to keep them for a

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01 very, very long time.

02 Q. Would you expect that if there were further
03 documentation of this Liquid Wrench test -- including
04 the protocols, the procedures used, any additional
05 tests done -- that those documents would have been
06 retained?

07 A. I can't answer that. You need to ask the
08 analytical laboratory people who were doing these
09 tests.

10 Q. From your testimony earlier, was a 30 percent
11 benzene level an unexpectedly high level?

12 A. I would say it's unexpectedly high level, yes.

13 Q. Were you surprised by that finding?

14 A. Somewhat. I thought the level was much higher
15 than many other products that I have seen.

16 Q. Did you do anything at that point to see if
17 the result could be verified?

18 A. No, I didn't -- I don't remember doing
19 anything except that we suggested that the product be
20 discontinued at this level of benzene.

21 Q. Did you request any further documentation
22 concerning the test to see whether or not there was any
23 indication whether there might have been any errors in
24 the test?

25 A. I did not request that. I don't think it was

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01 needed.

02 Q. Do you know whether there was a subsequent
03 test done to determine whether or not the results could
04 be confirmed?

05 A. My recollection, there was a -- another test
06 was done at a later date; and I don't recall
07 specifically what it was at this moment.

08 Q. Do you recall whether the 30 percent level was
09 ever reproduced?

10 A. I don't recall what -- if it was reproduced or
11 not.

12 Q. Now, 30 percent would be a high enough level
13 that is somewhat memorable; is that -

14 A. It was very --

15 Q. -- correct?

16 A. -- memorable, yes.

17 Q. If you saw another 30 percent test, do you
18 think you would have remembered that there was another
19 test out confirming the 30 percent?

20 A. Well, you're talking about 26 years ago. Not
21 necessarily at this moment. If I saw it at that time,
22 I may or may not; but I don't know. I don't recall
23 that.

24 Q. Do you think you would just remember the first
25 one but you wouldn't remember the confirming test?

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01 A. I don't recall at this moment.

02 Q. Okay. Do you remember seeing a test resulting
03 in a 7 percent level?

Objection 802,
602, 701, and 402

04 A. Yes, I do remember seeing that 7 percent.

05 Q. Okay.

06 A. Now that you mention, I do remember.

07 Q. Do you recall when the test that you had the
08 7 percent level was done?

09 A. No. It would be approximately the same period
10 of time.

11 Q. Do you know where that test was done?

12 A. I don't recall. There's a memo to that
13 effect, and I'm sure it's -- now that you mentioned it,
14 I do recall that.

15 Q. Do you recall whether it would have been the
16 same laboratory or a different laboratory?

17 A. I have to -- I don't recall. I have to look
18 at the memo and see who did that.

19 Q. Would it concern you at all that there would
20 be such a wide difference between two results?

21 A. No, I wouldn't be surprised. Depends on what
22 stock material is being used.

23 Q. What would account for the differences?

24 A. Well, it depends what's the source of your
25 material. If it -- if you use kerosene or sometime

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01 naphtha, the level would be substantially lower than
02 whatever was used in initial products.

03 Q. Okay. Well, if we're talking about two tests
04 done on Liquid Wrench -- one showing 30 percent, one
05 showing 7 percent -- if they're the same product, what
06 would you expect -

Objection: 602,
701, and 402, 602

07 A. Excuse me. They're not the same product. The
08 name is the same, but the product is different.
09 Depends on the stock material that they used to put in
10 the product. They couldn't be the same product.

11 Q. So, do you have any way of knowing whether or
12 not -- even if the 30 percent test was accurate for the
13 particular sample it was done on, whether or not any
14 other sample of Liquid Wrench would result in the same
15 level?

16 A. I know that 30 percent was accurate at the
17 time it was measured; and if the sample -- a different
18 sample is taken with a different material that was put
19 in it, it would be different.

20 Q. Do you have any way of determining whether or
21 not it would be more likely that different samples of
22 Liquid Wrench would come to the 7 percent or the
23 30 percent?

24 A. I can't -- I don't know. I just -

25 Q. You would have to test each particular --

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01 A. That's right.

02 -- sample -

03 A. You need to -- well, the way that was
04 determined was test it. So, obviously there was one
05 sample at 30 percent and one sample at 7 percent.

06 Q. And not having -

07 A. From a different source.

08 Q. And you don't have personal knowledge as to
09 the source of the sample that resulted in the 30
10 percent, do you?

11 A. I don't recall that -- where it was obtained,
12 no.

13 Q. You don't have any personal knowledge as to
14 whether that came directly from a sealed container of
15 Liquid Wrench or whether it might have been a sample
16 that might have been mixed with something else, do you?

17 A. I don't recall the source. It's been a long
18 time, and I just don't recall. I'm sure it was
19 described to me at that time where they obtained, but I
20 don't recall that.

21 Q. Other than -- and let me ask you this: Do you
22 know what the sample size was that was tested?

23 A. The actual sample size would have been very
24 small, if you use gas chromatograph; but the sample
25 size from what it was taken, no, I don't recall.

611,
compound
403,
cumulative

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01 Q. Other than the one particular sample and
02 whatever that source was for that sample, you don't
03 know what the content of benzene in Liquid Wrench would
04 be in any other sample, do you?

05 A. No, I do not, unless it's tested.

06 Q. Okay.

07 MR. LYNN: Mark this.

08 (EXHIBIT 5 MARKED)

09 MR. LYNN: Do you need to take a look,
10 Herschel?

11 MR. HOBSON: From here it looks like
12 something that's already been marked.

13 THE WITNESS: Yeah, it's Exhibit 2.

14 MR. LYNN: Oh, is it the same?

15 THE WITNESS: Yes. Exhibit 2 is the same
16 as Exhibit 5, identical.

17 MR. LYNN: Okay. We hadn't put a date on
18 Exhibit 2 when we were describing it.

19 Q. (BY MR. LYNN) So, Exhibit 2 discusses a test
20 that was done on Liquid Wrench as well, correct?

21 A. Yes.

22 Q. And where was this test done?

23 A. The test was done in Paulsboro laboratory.

24 Q. So, this test would have been done same
25 location as the other test that you testified about?

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01 A. Which other test?

02 Q. The test that resulted in the 30 percent -

03 A. Well, that's 30 percent. We're talking -

04 Exhibit 2 is 30 percent.

05 Q. If it's the same document I'm looking at, it's

06 7 percent.

07 A. I don't have that document. You have both

08 documents that show 30 percent. This is dated

09 October 18, 1977, October 18 -- these are two identical

10 documents.

11 Q. Do you see there's an arrow drawn about

12 halfway or two thirds of the way down the page?

13 A. Yes. I see on the bottom, right.

14 Q. And what's that?

15 A. (Reading) It contained no fat, and ash content

16 was negligible. The aromatic solvent had the following

17 characteristics: Benzene, 7 percent by volume.

18 Right, that's the same document.

19 Q. Right. And there's a comment section below,

20 correct?

21 A. Yes.

22 Q. And what does the comment section say in the

23 first sentence?

24 A. It says that it's not as high as 30 percent.

25 Q. Okay. So, this is a 7 -- a test that showed 7

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01 percent, correct?

02 A. That's correct.

03 Q. This is not a test that showed 30 percent,
04 correct?

05 A. Yes.

06 Q. So, we're talking about two separate tests.

07 A. That's right.

08 Q. Do you know whether both tests were done at
09 the same laboratory?

10 A. To the best of my recollection, yes, they both
11 would have been done in the same laboratory.

12 Q. Did you ever look at any documents to
13 determine whether or not there were any differences in
14 the procedures that were done in the two tests?

15 A. Procedures were always the same with respect
16 to testing for benzene.

17 Q. Are you telling us that from your personal
18 knowledge or from a supposition that that's the way you
19 believe it was done?

20 A. No. I had enough experience, communication
21 with the laboratory about testing of samples on benzene
22 that procedures was followed essentially the same.

23 Q. Do you have a specific recollection with
24 respect to these two particular tests of having a
25 discussion or reviewing documents to determine step by

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01 step whether or not these two tests were performed the
02 same?

03 A. I don't recall that.

04 Q. Do you know whether or not the same sample was
05 used for both tests?

06 A. I doubt it very much. It's different samples.

07 Q. Is there any explanation at all as to what the
08 differences would be that would result in a 30 percent
09 result in one test and 7 percent in another?

10 A. Different products, different sample.

11 Q. And do you know of any determination that was
12 ever done by Mobil as to whether or not the 30 percent
13 test or the 7 percent test more accurately reflected a
14 typical or average sample of any particular formulation
15 of Liquid Wrench?

16 MR. HOBSON: Objection, form.

17 A. I didn't quite understand your question.

18 Could you repeat that?

19 Q. (BY MR. LYNN) Okay. You had two results.

20 One said 30 percent; and one said 7 percent, correct?

21 A. Okay.

22 Q. Was there ever any discussion as to whether or
23 not -- making a determination as to whether either of
24 those was a more typical result or sample of Liquid
25 Wrench?

403, no
answer,
waste of
time

5

403,
cumulative
delay

0

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01 A. I don't recall. All we are interested, that
02 the product had more than 1 percent of benzene.

03 Q. And as far as you can tell, if another sample
04 of Liquid Wrench was tested, it might come out with a
05 completely different result again, correct?

06 MR. HOBSON: Objection, form.

07 A. That's possible.

08 Q. (BY MR. LYNN) And to the best of your
09 knowledge, there was no effort made to obtain every
10 different formulation or variation of Liquid Wrench to
11 determine the benzene content in each one of them, was
12 there?

13 MR. HOBSON: Objection, form.

14 A. I'm not aware of that. If it is, the people
15 who provide the samples should be able to answer that.

16 Q. (BY MR. LYNN) Now, we talked earlier on in
17 the deposition about being able to reproduce a result.
18 Do you have any concerns at all that the result from
19 the first test was not reproduced in the second test?

20 A. Two different samples. I don't know how you
21 can reproduce result from two different samples.

22 Q. And I take it there was no effort made to -

23 A. Unless you do the same sample. And I'm
24 positive it wasn't the same sample.

25 Q. And do you know whether or not any portion of

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01 the source for the first sample was retained and
02 available to be retested to determine whether or not
03 the 30 percent test was accurate?

04 A. You need to ask the analytical chemists.
05 People that would be very knowledgeable is Paul Carl
06 and Gerard.

07 Q. During the time that you were at Mobil, did
08 you keep track of other tests being done by other
09 people as to different types of substances being used
10 at Mobil?

11 A. Yes.

12 Q. Did you keep track of any other testing done
13 of Liquid Wrench?

14 A. Not that I recall.

15 Do you ever remember seeing any reports from
16 any source outside Mobil stating that Liquid Wrench had
17 as high as 30 percent benzene content?

18 A. I don't recall that. And if I had went
19 through -- I had average of several thousand documents
20 per month. So, it would be difficult to keep track of
21 a specific product unless I have direct interest in it;
22 and I did not.

23 Q. In your time since leaving Mobil, have you
24 kept track of literature and testing done of various
25 products with respect to benzene concentrations?

Mehlman, Myron

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01 A. Yes.

02 Q. Do you recall seeing in any of the literature
03 that you've ever reviewed any report of Liquid Wrench
04 having a benzene content as high as 30 percent?

05 A. I don't recall any concentration of most of
06 the products.

07 Q. Now, the testimony you're giving today is with
08 respect to Mr. Awalt's case. Have you reviewed any
09 records at all regarding Mr. Await or his alleged
10 exposure?

11 A. No. I don't even know what case this is.

12 Q. So, I take it by that that you would have
13 absolutely no way of knowing whether or not any Liquid
14 Wrench that Mr. Await might have used would have had
15 anything in common with any of the Liquid Wrench that
16 was tested in the two tests that we've discussed today;
17 is that correct?

18 A. I have no idea what you're asking me. I have
19 no information on the case or who are defendants,
20 except now I just learned what's the nature of the
21 case.

22 Q. Doctor, this is not the first case that you've
23 provided testimony for, is it?

24 A. That's correct.

25 Q. How many cases have you testified in before?

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Transcript of Mehlman, Myron

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01 A. Altogether, probably between 50 to 70.
02 Q. Would that have been depositions in those
03 cases, trial testimony, or both?
04 A. Both.
05 Q. How many cases in which you gave a deposition
06 but did not testify at trial?
07 A. A lot.
08 Q. Okay. Can you give us an approximate number?
09 A. No, I can't. I didn't keep track.
10 Q. Do you recall about how many cases that you
11 actually testified at trial?
12 A. No, that -- because -- I appeared at trial.
13 Lot of time it settled. I got certified as an expert.
14 The case got settled before I -- the last one I was in,
15 and I didn't have a chance to give any testimony.
16 Q. Okay. But do you have any recollection as to
17 approximately how many cases you've actually given your
18 testimony at trial?
19 A. Oh, I can tell you two or three -- trial? At
20 least one maybe, trial cases
21 Q. When you testify, do you generally testify for
22 plaintiffs or defendants in cases?
23 A. Generally for plaintiffs.
24 Q. And do you know what types of defendants have
25 generally been sued in those cases?

402/403
relevance
408,
settlements

9

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01 A. They're all types -- petroleum companies,
02 chemical companies, and spillage. I really don't
03 recall what type of defendants because it's difficult
04 to say. Sometimes a list of defendants is so large
05 that I don't even read it except the first one.

06 Q. Do you recall giving any testimony concerning
07 Liquid Wrench before?

08 A. I probably did, but I don't recall where or
09 when.

10 Q. Do you recall the general substance of any of
11 your prior testimony concerning Liquid Wrench?

12 A. No, I don't recall that.

13 Q. Are you being paid for your work on this
14 particular case?

15 A. No, I don't think so. I -- no one mentioned
16 any money.

17 MR. HOBSON: As you know, Dr. Mehlman is
18 being presented as a fact witness.

19 MR. LYNN: I had been told that he had
20 been designated as a fact and expert witness. Is that
21 incorrect?

22 MR. HOBSON: As far as I know it is.

23 THE WITNESS: An expert?

24 MR. HOBSON: No, as a fact witness.

25 MR. LYNN: Okay.

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01 Q. (BY MR. LYNN) Did you review any documents
02 prior to your deposition this morning?

03 A. No -- perhaps I did review some documents this
04 morning, but has nothing to do with this case or any
05 case Mr. Herschel Hobson is dealing with. It has to do
06 with hematological cancer that's caused by benzene.

07 MR. HOBSON: He gave me a recent
08 B publication.

09 Q. (BY MR. LYNN) Okay. Did you have any
10 discussions with Mr. Hobson or anyone at his office
11 prior to this deposition concerning this case or your
12 testimony?

13 A. No. I haven't spoken with Mr. Herschel Hobson
14 for a long time.

15 Q. Are you aware of any incidents or cases in
16 which any results from the laboratory that performed
17 the test we've been talking about today have been
18 questioned or challenged?

19 A. I'm not aware of any challenges to the Mobil
20 analytical laboratory.

21 THE WITNESS: Herschel, could you pass
22 some water, please?

23 MR. HOBSON: Sure.

24 THE WITNESS: Thank you. Thank you.

25 Q. (BY MR. LYNN) Do you know whether any of the

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01 individuals that participated in the actual testing are
02 still employed by Mobil?

03 A. To the best of my -

04 MR. HOBSON: Objection, form.

05 A. I don't know the name that -- the names that
06 I'm very familiar with is Gerard. I don't know if he's
07 still there or not. He might be. Paul Carl, I worked
08 with him very closely. He was a senior manager. And
09 Selfridge, I know that he's not. I -- I can't answer
10 that. I really don't know. I know who's not.
11 Selfridge wouldn't be. He was pretty old when I worked
12 with him.

13 Q. (BY MR. LYNN) Do you know if Mr. Carl is
14 still living?

15 A. That's good question. I don't know. I ...

16 Q. And the last you had of any knowledge of
17 Mr. Carl, was that still while he was at Mobil?

18 A. Yes. And I've been following Mobil World that
19 lists people who have been deceased, and I don't
20 remember seeing his name.

21 Q. And you haven't heard of him being anywhere
22 else other than Mobil, have you?

23 A. I think he would retire from Mobil. He had
24 been with Mobil for maybe 40 years or so.

25 Q. Do you know who M.H. Meynig is, M-E-Y-N-I-G?

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01 A. He's not on this list, is he?
02 MR. HOBSON: I think he's on this
03 document here.
04 A. Oh, okay. This -- I'm sorry. That's a
05 different document.
06 Name is familiar, but I don't know if he -
07 he's -- it's from analytical laboratory. It could be
08 from Beaumont, but I don't know. I don't recall who he
09 is.

10 Q. (BY MR. LYNN) And do you know J.L. Wescoat?
11 A. I know his name. I may have met him, but I
12 don't recall if I met him. I went to Beaumont several
13 times and -- but specifically I don't recall.
14 Q. Do you know what his job title was back in
15 1977?
16 A. No, I do not.
17 Q. Okay. Was he working at the Beaumont
18 facility,
19 A. Yes, I believe so.
20 Q. Do you know what department he was in?
21 A. He would -- no, I do not know. I don't recall
22 what department. If I met him, I would have known; but
23 I wouldn't remember specific -- individuals in specific
24 departments.
25 Q. Do you know what his role would have been in

403,
waste of
time

0

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403,
waste of
time

01 this testing program?
02 A. I do not know, but could have been -- he
03 certainly -- I don't think he was industrial hygienist
04 because he would have reported to me.

05 Q. On the document that we were just looking at
06 that had Mr. Meynig's name on it, there's some
07 handwritten initials about two thirds of the way down
08 the page on the right. Do you recognize any of those
09 initials?

10 A. No, I do not.

403,
waste of
time

11 Q. Earlier on I started asking you about how
12 results were reported and there was some confusion on
13 that and that's whenever we started talking about

14 procedures. The document that we've been looking at
15 today with the 30 percent finding has got just a
16 handwritten result on it, correct?

17 A. Yes.

18 MR. HOBSON: Objection, form.

19 Q. (BY MR. LYNN) If a gas chromatograph is used,
20 would the test result be printed off in some form or
21 would it -- how would the people doing the testing see
22 the result?

23 A. I believe it would be printed off.

24 Q. Okay. So, would you expect that there would
25 be a document someplace in some kind of mechanically

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01 printed form that would contain the results from the
02 test that was performed on the Liquid Wrench sample?
03 A. It would be -- by "printed off," I mean charts
04 from which the levels could be calculated or
05 computerized. Would I expect they'll be someplace?
06 Can't answer that. At this point in time, I don't know
07 what's -- who would have what where.

08 Q. Okay.

09 A. It's too many years past.

10 Q. And would you have expected that in 1977 there
11 would be documents existing that would contain the test
12 results from the test performed on the Liquid Wrench
13 sample?

14 A. On any samples I would expect that.

15 Q. Do you know what the retention policy for that
16 type of document would be?

17 A. I don't know what the analytical retention
18 policy but I do know I have a small section in
19 Paulsboro, toxicology section, Fred Feasley, and he
20 retained everything going back to early 1950s. So, I
21 was able to get documents that I need on testing and
22 discussions 25 years -- well, 1950s -- it would be 54
23 years now, but at that time it would have been 25 years
24 back.

25 Q. And you said that gentleman's name was Fred

Mehlman, Myron

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01 Feasley?
02 A. Feasley, F-E-A-S-L-E-Y.
03 Q. And he was at the Paulsboro lab?
04 A. Yes. He reported to me.
05 Q. Do you know whether he is still employed by
06 Mobil?
07 A. No, he's not employed by Mobil.
08 Q. Do you know --
09 A. He's deceased.
10 Q. Okay.
11 A. He'd been with Mobil probably between 40 and
12 50 years.
13 Q. Do you know who his successor at Mobil might
14 have been?
15 A. No, I -- he would not have a successor.
16 Q. Do you know whether the facility in which he
17 worked is still existing?
18 A. Yes. The laboratory, the refinery is still in
19 Paulsboro.
20 Q. And do you know in what way he kept the
21 records that he kept?
22 A. Filing cabinets.
23 Q. And at the time in 1977, would you have
24 expected that there would have been a file kept with
25 the records showing test results from this type of

403,
cumulative

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403, cumulative

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01 testing?

02 A. In 1977, yes.

03 Q. Did you ever see any documentation concerning
04 the Liquid Wrench test other than the handwritten
05 result that we've looked at here today?

06 A. I don't recall what I have seen.

07 Q. We spoke earlier that the 30 percent finding
08 would have been an unusually high finding. Do you know
09 whether any attempt was made to discuss that finding
10 with the manufacturers of Liquid Wrench?

11 A. I don't recall if any attempt was made or was
12 not. I'm not aware of that -- at least I don't recall.

13 Q. If you or anyone else at Mobil felt that there
14 was a health risk as a result of the finding with
15 respect to Liquid Wrench, did you think that that was
16 something that should be communicated to anyone outside
17 Mobil?

18 A. I hope that it was -- certainly must be
19 communicated to the employees and people who use it.
20 Was it communicated to manufacturers? I have no -- I
21 don't have no knowledge of that. I mean, that would be
22 by the products people. They were aware of the
23 concentrations.

24 Q. Who would the products people be that were
25 made aware of the testing?

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01 A. I don't recall their names. There were lot of
02 products people.

03 Q. Do you have any personal knowledge as to
04 whether or not Radiator Specialty Company, who produced
05 Liquid Wrench, was ever informed of the 30 percent test
06 result?

07 A. I have no knowledge of that.

08 MR. LYNN: Pass the witness at this time.

09 EXAMINATION

10 BY MR. MILLER:

11 Q. Dr. Mehlman, good morning.

12 A. Good morning, sir.

13 Q. My name is Adam Miller. I represent United
14 States Steel, and I have some questions for you this
15 morning.

16 Dr. Mehlman, are you familiar with any
17 evaluation or review of Mobil's analytical testing
18 laboratories or practice, any survey to evaluate the
19 consistency of the results that its laboratories
20 obtained in its testing?

21 A. Specifically, no, not at this time.

22 Q. All right. I'm asking about something like an
23 audit. Was it your recollection that Mobil would
24 periodically audit its analytical laboratories for the
25 purpose of assessing whether or not its laboratories

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01 were conducting evaluations using good laboratory
02 practice and consistently following the appropriate
03 protocols?

04 A. First of all, the good laboratory practice
05 didn't come into effect until later. I don't recall
06 anything specific at this time. I know we looked for
07 accuracy and reproducibility. That I'm aware of, but
08 anything else I don't recall.

09 Q. All right. You mentioned in your last answer
10 that good laboratory practice did not come into effect
11 until after 1977; is that correct?

12 A. I'm not too sure when it came, but we
13 immediately implemented it. It may have come -- in
14 toxicological area it came a little later. That was
15 after I.B.T. scandal, which was Industrial. Bio-Test
16 Laboratory in Chicago, which they got indicted. They
17 always produced desirable results for the industry.
18 For example, mice that died on Friday reoccurred on
19 Monday. They became alive. We called them Jesus mice.
20 Graphic methods were used to generate data, and the
21 person of that company I do recall went to jail.

22 MR. MILLER: I'm going to move to strike
23 your response as being unresponsive.

24 (BY MR. MILLER) Let me reask the question
25 again.

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01 A. All right.

02 Q. You're familiar with the term "good laboratory
03 practices"?

04 A. Yes, I am.

05 Q. Is there a technical meaning or a meaning of
06 the phrase "good laboratory practice" that's recognized
07 in the field of analytical chemistry?

08 A. I don't recall.

09 Q. All right. Were there standards of good
10 laboratory practice adopted in the industry at some
11 point in time, Doctor?

12 A. My recollection that there were standards, but
13 what they are I don't recall.

14 Q. Do you recall when those standards became
15 effective or had been adopted in the analytical
16 chemistry?

17 A. No, I do not, no.

18 Q. So, you don't know whether at the time the
19 test results that we've been talking about today were
20 conducted in the laboratory under standards of good
21 laboratory practice; is that correct?

22 MR. HOBSON: Objection, form.

23 A. All I know and I recall that they have high
24 standards in performing their work in terms of
25 accuracy.

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cumulative

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cumulative

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01 Q. (BY MR. MILLER) I understand that, Doctor;
02 but what I'm asking is whether or not there were
03 standards for laboratory practice that were recognized
04 in the industry that had been adopted by Mobil at the
05 time of the testing that's reflected in the documents
06 we've talked about today.

07 A. I don't recall that.

08 Q. Okay. Thank you, Doctor.

09 Doctor, is it your testimony today that every
10 single test result obtained from Mobil's analytical
11 laboratories was accurate?

12 A. Every single one? It's -- I never testified
13 to that. I said by and large, to the best of my
14 knowledge, all the results that were done for me were
15 accurate.

403,
cumulative
611,
argumentative

⚡

16 Q. Let me ask that question again, sir, because I
17 don't think you specifically answered my question. Is
18 it your testimony that every single analysis conducted
19 by Mobil's analytical laboratories were accurate?

20 A. I can't swear to that, that "every single."
21
22 go ahead.

23 Q. Can you tell me the percentage of analyses
24 conducted by the Mobil analytical laboratories during
25 the time period that you were with Mobil -- can you

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01 tell me the percentage of those results that were
02 accurate?

03 MR. HOBSON: Objection, form.

04 A. As far as I'm concerned, they were all
05 accurate.

06 Q. (BY MR. MILLER) Do you have any objective
07 data or information that would identify the percentage
08 of test results that were accurate?

09 MR. HOBSON: Objection, form.

10 A. If I had any, I wouldn't recall that. I -
11 they were accurate, because we checked our samples,
12 what they did for us. The benzene analyses were
13 accurate. I split samples in two, I put in blank
14 controls, we spiked samples, and we run standards with
15 it.

16 MR. MILLER: I'm going to move to strike
17 your answer as nonresponsive.

18 A. I thought it was very responsive. How we
19 did -- you asked me how -

20 Q. (BY MR. MILLER) Excuse me. Sir, there's no
21 question pending. Thank you.

22 Sir, is it your testimony that for every
23 single analytical test run by Mobil in the 1977 time
24 period, the appropriate or recognized protocols were
25 followed?

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01 A. I can't answer your question because the test
02 sampling that were done for me, procedures were
03 followed -- I sent people to check in addition to
04 myself -- and the results were accurate.

05 Q. Who are the people that you sent to check on
06 the analytical chemists?

07 A. Feasley was one of them because he located on
08 the facility and had tremendous amount of knowledge.
09 There are other people that I sent to have these
10 results checked. There -- I had several other
11 industrial hygienists. I don't even remember the name
12 but I send them to Paulsboro and they spent time with
13 them looking at it and I was called constantly. That I
14 recall.

15 Q. Sir, how is it that you are satisfied that the
16 results from the testing that we've talked about here
17 today with respect to Liquid Wrench were properly
18 interpreted?

19 A. Because all the other results, samples that we
20 sent for analysis -- and these were several thousand
21 samples -- were accurate. I did not send Liquid
22 Wrench. I requested that be tested. I sent thousands
23 of other samples to be tested.

24 Q. Doctor, do you know the limits of detection
25 for gas chromatography that was used in the testing of

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01 the Liquid Wrench reflected in the documents we've
02 talked about today?

03 A. I don't recall specifically; but if sample is
04 very concentrate, you dilute it. You keep on diluting
05 it till you get within a range that can be measured
06 accurately.

07 Q. Is there a rate of error for gas
08 chromatography in the 1977 time frame that you're
09 familiar with?

10 A. There is, but I don't remember what it is.

11 Q. Is there any extent of variability that might
12 result from test to test of a split sample, for
13 example? Can you expect some variability in gas
14 chromatography?

15 A. Yes.

16 Q. What is the extent of that variability?

17 A. On my samples they were within 3 percent, the
18 ones that I split; but I don't know what it was and
19 what range.

20 Q. Could it have been higher?

21 A. It could be.

22 Q. I understand that -- from your prior testimony
23 today that you have no knowledge about Mr. Awalt's
24 occupational history; is that correct?

25 A. I don't know who Mr. Await is. The first time

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01 I heard his name is right here.

02 Q. I want to hand you what has been marked
03 Exhibit No. 1, and this is a notice to take discovery
04 deposition --

05 A. Okay.

06 Q. -- in the Ronald Awalt case.

07 A. I didn't even look at that. I looked at the
08 second part.

09 Q. Okay. That notice is for your deposition here
10 today; is that correct?

11 A. Yes.

12 Q. All right. And you understand now that this
13 case relates to a gentleman by the name of Ronald
14 Awalt?

15 A. No, I don't understand that. That's just what
16 I see here. I had no idea what's the case or anything
17 about the case.

18 Q. All right. I understand from your earlier
19 testimony today that you had some responsibility at
20 Mobil for evaluating exposures to benzene for workers
21 in Mobil's own facilities.

22 A. Yes.

23 Q. And can you tell me how it is that Mobil
24 assessed, during your tenure there, potential exposures
25 to benzene for its own workers?

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01 A. You put equipment on the workers and tubes
02 that -- and for whatever period of time they worked,
03 different periods of time, you measured the areas where
04 they worked and the level of benzene in these areas.

05 Then be extrapolated, seeing that it's only 1 part per
06 million of benzene or less they would be inhaling that.
07 We calculated that to eight -- to eight-hour average.

08 So, what you do, I take it -- or what -
09 strike that.

10 What Mobil did during your tenure there as
11 director of toxicology and environmental health is to
12 conduct actual measurements of benzene in the work
13 environment in which benzene exposed workers actually
14 conducted their work.

15 A. That's correct.

16 Q. And, then, I take it that you took those
17 samples and extrapolated to I think what we call a time
18 weighted average -

19 A. Yes.

20 Q- -- to evaluate the concentration that a worker
21 might be exposed to over the course of an eight-hour
22 workday.

23 A. Yes.

24 Q. And I take it that part of that process is, as
25 we said, to put measurement devices actually within the

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- Q1 he is a flake, is that?
- Q2 A Yes
- Q3 Q Statutory - or is it a
- Q4 what is the foundation
- Q5 the statute.
- Q6 A Yes
- Q7 Q Does it have to do with the Board of Directors?
- Q8
- Q9 he is, isn't he?
- Q10 the statute is a good copy of
- Q11 what is the statute?
- Q12 what is the statute?
- Q13 A I don't know.
- Q14 Q What is the statute?
- Q15 what is the statute?
- Q16 what is the statute?
- Q17 A I don't know.
- Q18 he is, isn't he?
- Q19 the statute is a good copy of
- Q20 what is the statute?
- Q21 Q He is.
- Q22 A He is.
- Q23 Q What is the statute?
- Q24 what is the statute?
- Q25 what is the statute?

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01 A. I don't -- probably. I just don't recall
02 specifically that what -- where it comes back to.

03 Q. How would you describe that process where you
04 take a sampling device and put it in the breathing zone
05 of the worker and put the worker in his ordinary job
06 and have him -- and evaluate those exposures?

07 A. We had to purchase special equipment, and

08 B recall a number of monitors. I guess that would be
09 dosimetry, yes. I had to buy over a hundred additional
10 monitors. I just recall that. Couldn't remember.

11 Q. So, the process is called dosimetry.

12 A. Yes.

13 Q. Or the mechanism of doing these evaluations.

14 A. Yes.

15 Q. Do you recall ever conducting dosimetry on --
16 or using Mobil workers who were involved in vehicle
17 maintenance?

18 A. I don't recall specifically. We conducted
19 measurements on all type of occupation -- mechanics,
20 probably electricians, just people working around
21 the -- many different places.

22 Q. Do you recall whether Mobil -- during the time
23 that you were director of toxicology and environmental
24 health, do you know whether Mobil conducted dosimetry
25 of individuals using Liquid Wrench?

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01 A. I don't know. I can't answer that. I

02 wouldn't -- I don't recall that.

03 Q. Other than gas chromatography, which I believe
04 you've described for us earlier today, do you know

05 whether Mobil, during the time you were director of

06 toxicology and environmental health, attempted to

07 evaluate a worker's exposure to Liquid Wrench -- to

08 benzene in Liquid Wrench in his ordinary workplace?

09 A. I don't recall that specifically.

10 Q. Have you ever seen any results of dosimetry or
11 the evaluation of benzene exposure to a worker using

12 Liquid Wrench in his real work environment?

13 A. I don't recall.

14 Q. And I take it that you're not providing
15 testimony in this case about what the results of that
16 dosimetry would be for a worker using Liquid Wrench in
17 his ordinary work environment; is that correct?

18 A. I'm not providing any testimony except to the
19 authenticity of these documents.

20 Q. Okay. Sir, have you ever observed a worker
21 using Liquid Wrench?

22 A. No, at least not consciously that I'm aware
23 of.

24 Q. I take it that you may have incidentally
25 observed the use of Liquid Wrench.

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- Q1 A But I don't know it.
- Q2 Q So I believe that you are not aware of
- Q3 of the conditions of any specific case of
- Q4 how a person in the hospital is treated, the quality of the care
- Q5
- Q6 the quality of the care, is that true?
- Q7 A No -- not at all, anything like that.
- Q8 Q Okay, with respect to a living will
- Q9 a living will, is that a document that you
- Q10 would expect to be signed by a doctor or a
- Q11 doctor, is that correct?
- Q12 Yes, that's correct, is that correct?
- Q13 Yes, that's correct, is that correct?
- Q14 Yes, that's correct, is that correct?
- Q15 A I don't -- I don't know if it was a test
- Q16 to see if it was a good idea or not.
- Q17 Q What was the test about?
- Q18 to see if the test was a good idea or not?
- Q19 Yes, that's correct, is that correct?
- Q20 MR. KESN: Objection, for
- Q21 A I don't -- I don't know, I don't
- Q22 know if it was a good idea or not.
- Q23 already.
- Q24 Q (BY MR. MILLER) As you sit there, can
- Q25 you think of a letter that you would

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01 worker's exposure to benzene in his work -- in his
02 precise work environment?

03 MR. HOBSON: Objection, form.

04 A. It's not something I do. It's not part of my
05 job; so, I can't think of anything. If I heard of some
06 better procedures, I don't recall. I'm sure I did in
07 some of the benzene meetings that I attended, but I
08 didn't make any effort to retain that information.

09 Q- (BY MR. MILLER) In 1977 when you were
10 conducting an evaluation of Mobil employees' exposure
11 to benzene in their workplaces, did you use any
12 methodology other than dosimetry for the purpose of
13 making those assessments?

14 A. I don't recall using anything else.

15 Q. I take it you were satisfied with the results
16 that you could obtain from dosimetry for the use in
17 making estimates of a worker's overall exposure to
18 benzene in the precise work environments in which he
19 worked.

20 A. I was satisfied because the exposure in
21 refineries were very low. The average is less than
22 tenth of a part per million. We need to know only the
23 areas that exceed on that 1 part per million. And
24 we're also satisfied because we measured in many
25 different facilities, both U.S. and outside; and the

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01 results were consistent from different facilities. So,
02 that adds a lot to credibility of your test result.

03 Q. With respect to the specific analyses that
04 we've talked about today, those that reflect in the
05 documents that we've marked of benzene content of
06 Liquid Wrench at 7 percent and 30 percent, do you know
07 whether split samples were taken of these particular
08 samples for the purpose of comparing the results?

09 A. I -- I don't recall how they're -- how samples
10 were taken, were they split or duplicate. I don't
11 recall.

12 Q. Was it the standard practice for the Mobil
13 laboratory that -- or Mobil's analytical laboratories
14 to take split samples for the purpose of comparing
15 samples taken from a single source?

16 A. I don't recall. I know I did divide some of
17 my samples in duplicate to see how they compare. If
18 they did split, then there would be four analyses in a
19 single sample.

20 Q. But again, you don't have any information with
21 respect to these particular tests -

22 A. I -

23 Q. -- to know whether splits were done?

24 A. That's right.

25 Q. Or if they were done, what the results were?

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01 A. I don't know.

02 Q. Okay. You indicated that on occasion spiked
03 samples would be used for the purpose of conducting
04 analytical tests for benzene?

05 A. That's right.

06 Q. Can you describe for me what a spiked sample
07 is?

08 A. Sure. You put a known amount of diluted
09 benzene in a sample and you split the samples in two
10 and you put in two of them and see what percent
11 recovery, especially you do a blank and you find -- if
12 you put, say, 5 parts per billion, you want to see how
13 much of that is recovered; or you also want standard.
14 Different concentration of benzene you provide three or
15 four samples -- usually four -- with different levels
16 and see how that analysis comes out; and then you run
17 some blanks and see that you don't find any benzene in
18 it. If you come in with blank that shows benzene
19 concentration, you would worry about it.

20 Q. Were spiked samples used for the analyses that
21 we've talked about today --

22 A. Don't know.

23 Q. -- with respect to Liquid Wrench?

24 A. I just -- that is -- don't know.

25 Q. All right. Do you have any objective evidence

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01 that would suggest that the specific Liquid Wrench
02 tests that we've talked about today are -- or were at
03 the time repeatable and reproducible?

04 A. I have no idea if they repeated them or
05 reproduced them.

06 Q. We were talking a moment ago about evaluating
07 worker exposure in the environment in which that worker
08 conducts his workday. You remember that discussion
09 generally?

10 A. Yes.

11 Q. We were talking about using dosimetry.
12 It's possible, is it not, to use a product
13 even if it had 30 percent benzene, a Liquid Wrench
14 product with 30 percent benzene, and have a time
15 weighted average exposure to benzene in the workplace
16 less than 1 part per million?

17 MR. HOBSON: Objection, form.

18 A. I would say it's very unlikely with that
19 concentration that you will have that low exposures;
20 and if it's used equip -- to clean the equipment, I
21 would say very unlikely that it would be so low.

22 Q. (BY MR. MILLER) What's your understanding of
23 how Liquid Wrench is used?

24 A. Cleaning equipment. It's a good cleaning
25 agent; and I'm not sure if it's used in radiators, to

Objection: 701
and 402 - Lines
6-21

Objection 602 -
lines 18-25

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objection

01 clean the radiators. I don't have extensive knowledge
02 about Liquid Wrench.

03 Q. When you say to clean equipment, do you know
04 how it would be applied for that purpose?

05 A. No. If I did know at one time, I don't
06 recall.

07 Q. Do you know how much Liquid Wrench would be
08 used for that purpose?

09 A. No, I do not.

10 Q. Okay. And I take it you would have no
11 familiarity with what a worker might use in terms of
12 quantity of Liquid Wrench in any given day.

13 A. That's right. I do not -- I'm not familiar at
14 this time.

15 Q. Do you know what crafts would use Liquid
16 Wrench?

17 A. I think it would be used -- car mechanics,
18 people who work with the equipment.

19 Q. For cleaning?

20 A. Cleaning. That's all that I recall.

21 Q. And certainly you don't have any information
22 about how Mr. Awalt used Liquid Wrench.

23 A. I have no information about Mr. Awalt at all.

24 Q. Okay. Let's talk about vehicle mechanics.

25 Have you ever observed vehicle mechanics throughout

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01 their workday for the purpose of assessing the
02 materials they use, the quantity of those materials, or
03 the frequency with which they use those materials?

04 A. No.

05 Q. Do you know whether any kind of study of that
06 nature was undertaken by Mobil with respect to Liquid
07 Wrench?

08 A. I do not know. One of my industrial
09 hygienists may know, but I do not know.

10 Q. Okay. In the documents that you brought today
11 to the deposition and which have been marked, is there
12 any discussion about how Liquid Wrench would have been
13 used at any of Mobil's facilities in the 1977 time
14 period?

15 A. If it was 26 years ago, I wouldn't remember
16 that.

17 Q. Well, not only would you not remember it, sir;
18 but it's not reflected in the documents; is that
19 correct?

20 MR. HOBSON: Objection, form.

21 A. That's correct.

22 Q. (BY MR. MILLER) Let me reask that. Is there
23 any reference in the documents that you brought about
24 how Liquid Wrench is used by Mobil employees -- or was
25 used by Mobil employees in the 1977 time period?

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01 A. I do not see that in the documents.

02 Q. All right. You don't know whether it was used
03 indoors or outdoors?

04 A. I do not know. It could be -- well, obviously
05 it could be used indoors, if you are a mechanic and
06 working at a gas station, and outdoors. Depends on the
07 weather conditions.

08 Q. And it depends on the kinds of equipment that
09 you're cleaning or using the Liquid Wrench on.

10 A. That's right.

11 Q. Some pieces of equipment can't be brought
12 inside.

13 A. That's right.

14 Q. Do you know the duration of exposure to
15 benzene in Liquid Wrench that an individual would
16 experience using Liquid Wrench in the manner that you
17 believe it's used for?

18 A. Depends on how long it -

19 MR. HOBSON: Excuse me. Objection, form.

20 Now you may answer.

21 A. Depends on how long the equipment is being
22 cleaned. It could be anywhere from ten minutes to
23 couple hours. I don't -- I just don't know. I don't
24 understand these questions, I'm here only to certify
25 that the documents are authentic. All of this, it

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01 seems to me, leads to looking for an expert analytical
02 chemist and industrial hygienist, which I'm not going
03 to testify to that. I'm not going to testify at all
04 except to one fact.

05 MR. HOBSON: By the way, you've pointed
06 out already that Dr. Mehlman is not being paid. You've
07 wasted now two hours, in my humble opinion, going over
08 things that he -- you've asked a whole series of
09 questions about Liquid Wrench use after he says "I
10 don't remember seeing it being used," "I don't know how
11 it's used," all that sort of thing. If you're going to
12 go any further, I'd ask that you compensate Dr. Mehlman
13 his usual rates if you want to use him for his
14 testimony. I think you've beat a dead horse to death
15 again. Are we about done?

16 MR. MILLER: Yeah, we are. This kind of
17 discussion is just making things a little more
18 prolonged.

19 MR. HOBSON: Well, it does because you've
20 already prolonged it too long.

21 MR. MILLER: I'm going to move to strike
22 your previous response in the record as being
23 nonresponsive.

24 MR. HOBSON: What was it, by the way?
25 What did he say?

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01 MR. MILLER: He said something completely
02 different from the answer that would have been
03 responsive.

04 MR. HOBSON: Great.

05 A. I just don't understand -- I said I don't
06 understand these questions because I'm not here to
07 testify on anything that you had asked me.

08 Q. (BY MR. MILLER) Okay. I understand that,
09 sir. I -

10 A. Anything you want to ask about hematological
11 effect of benzene and injury and levels, I'll be glad
12 to spend whatever time you want discussing it.

13 Q. Again, Doctor, there's no question pending
14 now.

15 Sir, are you aware of the extent to which -
16 I'm sorry. Hold on just a second.

17 Doctor, are you aware of the extent to which
18 other hydrocarbon substances in a sample might
19 interfere with a determination of the quantity of
20 benzene in that sample?

21 MR. HOBSON: Objection, form.

22 A. I don't recall. I know some discussions
23 were -- took place around that subject matter, and
24 some -- and it was explained to me that there was some
25 modification in columns to get cleaner separations.

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01 Q. (BY MR. MILLER) Do you know the extent to
02 which that interference may have affected the
03 reliability of the samples and the results that are
04 reflected in the documents that you've brought to the
05 deposition today?

06 A. Well -

07 MR. HOBSON: Objection, form.

08 A. I don't think the reliability is affected in
09 analyzing from benzene. I think the procedures that
10 they -- Mobil analytical laboratory established was
11 just as good as anybody in the world can do. They
12 discussed it with, long time ago, the American
13 Petroleum Institute meeting with some other oil
14 companies; and they knew of high quality of work that
15 our analytical division or sections -- we had more than
16 one -- were doing. So, I don't think that is even in
17 question.

18 Q. (BY MR. MILLER) I just have a few more
19 questions for you.

20 A. Okay.

21 THE WITNESS: Can we take two-minute
22 break?

23 MR. MILLER: Absolutely.

24 THE WITNESS: Thank you.

25 THE VIDEOGRAPHER: We're off the record

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01 at 12:12.

02 (A BREAK WAS TAKEN)

03 THE VIDEOGRAPHER: We're back on the
04 record at 12:16.

05 Q. (BY MR. MILLER) Sir, I want to hand you what
06 has previously been marked today as Exhibit No. 3. Can
07 you read the notation and handwriting down at the
08 bottom?

09 A. "Liquid Wrench."

10 Q. I'm sorry. Can you read the two lines there?
11 Not just the last line.

12 A. Okay. I suspect this is (reading) please
13 attach -- whatever that word -- I don't know what it
14 is. I can read the last line, and I can read (reading)
15 attach reference Liquid Wrench.

16 Q. It's not entirely legible; is that correct?

17 A. That's right. Some attachments -- it is
18 either to be as an attachment, or some additional
19 attachments may have been attached.

20 Q. And let me ask you this: The very top of this
21 document seems to reflect, aside from the fax notation
22 and other markings, that this may be an attachment
23 itself?

24 A. "Attachment II." It's -- that's what it says.

25 Q. Do you know what document this particular

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Q Did the Venables Exhibit 3 Interview

Q Did he?

A No, I don't recall. I probably said that

to someone, but I don't recall.

Q Did you state that well, skeletal. It is a standard formula Miluschi

Q

Q 1977 period?

A I-I don't-

Q NR 1000. What is that?

Q BNR MUEB Theory. It is a document

that the Venables Exhibit 3 and formula

Miluschi in the 1977 period?

A I've seen a few of them. Generally

they are

Q Do you know what the signature is of this

particular document? Any one of the signatures?

A It says "Tip of the Ice" and I

can't recall the name - later on, I think

it's a copy of the two points, WPA, with a note

from an individual, with a signature.

Q But the signature is the signature

of "Tip of the Ice" and that is the signature, is

that correct?

A That's correct, with my guess on the

signature.

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01 Q. If you had your glasses, would you be able to
02 read that?

03 A. I don't know. I have the -- then I will
04 answer the questions if I -

05 Q. Do you know whose handwriting this is?

06 A. It's someplace on the bottom, but I can't read
07 that. There's a stamp, individuals who routinely get
08 copies of these, and the person has signed, but it's
09 not legible to me.

10 Q. So, you don't know who wrote out this
11 information on this document that we've marked as
12 Exhibit 3; is that correct?

13 A. That's correct, but it's addressed to two
14 Mobil people. One is to Beaumont refinery -- I suspect
15 he might also be in Beaumont refinery, but I don't
16 know.

17 Q. Do you know whether these results came from an
18 analytical laboratory in Beaumont?

19 MR. HOBSON: Objection, form.

20 A. Don't know. I don't think so. I think it
21 probably came from -- it was addressed to two
22 individuals at Beaumont refinery. I believe most
23 likely Paulsboro.

24 Q. (BY MR. MILLER) I take it you don't know that
25 for sure, though; is that correct?

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01 A. That's correct.

02 Q. Was Bulkool a better laboratory, in your

03 estimation, in terms of techniques and standards and

04 protocols?

05 MR. HUBB: Objection, form.

06 Q. (BY MR. MILLER) Than the Ramot Laboratory?

07 MR. HUBB: Objection, form.

08 A. Yeah, I don't know if I can say it's

09 better. All I know is that the laboratory in Bulkool

10 analytical section was very good. They did a lot of forensic work.

11

12 Q. (BY MR. MILLER) Did the company rely on the

13 Bulkool laboratory for that purpose more so than it

14 did on the laboratory in Ramot?

15 MR. HUBB: Objection, form.

16 A. Well, they were better equipped. They had

17 more people, better equipment, more space.

18 Q. (BY MR. MILLER) Would you be able to say--

19 well, state that.

20 The 3 percent-- lower percent value that

21 appears on Exhibit 3, is it possible that that could be

22 the percent value as a result of spiking the liquid

23 with for the purpose of analytical test?

24 A. No way.

25 MR. HUBB: Objection.

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01 A. No way. I mean, the spiking was only done by
02 my section before the sample went to the analytical
03 laboratory.

04 Q. Do you know when the tests of WD-40 and Liquid
05 Wrench were made -

06 A. From -

07 Q. -- that are reflected in Exhibit 3?

08 A. Is there a date? It was in 1977, and this
09 note was sent on 10/4/77. It was probably done a few
10 days before that.

11 Q. Is there any indication that -
12 Or the same day.

13 Q. Is there any indication on this document that
14 reflects the duration of time that may have lapsed
15 between when the samples were tested and when this
16 document was prepared?

17 A. No. When something is handwritten, it's
18 usually the same day, but I can't be certain of that.

19 Q. Best person to answer that question would be
20 the author himself?

21 A. Or one of the individuals that received it.

22 Q. Okay.

23 A. And they -- I think one of them is probably
24 still at Mobil in Beaumont.

25 Q. I just have a few more questions for you, and

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01 then I'll be finished.

02 We were talking earlier about airborne

03 concentrations of benzene resulting from the use of

04 this Liquid Wrench product, and I wanted to ask you:

05 The reason why you do air monitoring in the specific

06 work environment is because it's the work environment

07 that -- that varies for each worker in ways that affect

08 their overall exposure to benzene; is that correct?

09 MR. HOBSON: Objection, form.

10 A. Yes.

11 Q. (BY MR. MILLER) Whether the environment is

12 indoors or outdoors, whether it's poorly ventilated or

13 well-ventilated, the environment really makes an

14 important difference in the potential for exposure; is

15 that correct?

16 A. Yes, and also proximity of individual from the

17 sample. Example, if you top load barges, you get a

18 huge exposure of hydrocarbon vapors; and certainly

19 benzene levels can vary out to 150 or maybe even more

20 parts per million because you inhale the vapors.

21 Q. And the proximity of the individual to the

22 application and the duration of time he stays in the

23 vicinity of that application, all of that's important

24 in assessing a worker's exposure?

25 A. Yes.

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01 Q. Air flow from the near field to the far field
02 and vice versa, that's important in assessing a
03 worker's exposure?

04 A. Yes.

05 Q. In other words, whether the air is static or
06 moving, that's an important feature in assessing -

07 A. Right, it makes a difference. The
08 concentration would be lower if the air is moving. The
09 concentration would be higher if the air is static.

10 Q. The frequency of use makes a difference in an
11 individual's -

12 A. Well, it's only a matter of how much he's
13 exposed. The more you use, the more exposure. We can
14 determine that in terms of total PPM years. We
15 calculate the time. Otherwise, you can't compare one
16 worker's exposure from the other one.

17 Q. Right. And, so, overall -- strike that.
18 That's, I believe, beyond the -- where we're headed.

19 MR. HOBSON: Shouldn't have stopped you.
20 It hasn't yet.

21 MR. MILLER: What's that?

22 MR. HOBSON: I said it shouldn't have
23 stopped you. It hasn't yet.

24 Q. (BY MR. MILLER) The temperature of the work
25 environment may make a difference?

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01 A. Yes.

02 Q. Humidity may make a difference?

03 A. Yes.

04 Q. Temperature of the workplace may make a
05 difference?

06 A. Yes. If the equipment is sprayed -- if the
07 solvent is sprayed on it or solvent kept in it, it will
08 make a big difference how much the material will
09 evaporate and how much a person will inhale.

10 Q. And that's why you evaluate the work
11 environment and not the product the individual is using
12 to assess a worker's exposure.

13 MR. HOBSON: Objection, form.

14 Q. (BY MR. MILLER) Is that true?

15 A. That's one of the ways, yes.

16 MR. MILLER: That's all the questions I
17 have for you, sir. Thank you.

18 REEXAMINATION

19 BY MR. HOBSON:

20 Q. Dr. Mehlman, let me see if I can clarify a few
21 things.

22 Air sampling will not evaluate a worker's
23 exposure to his skin for benzene, will it?

24 A. No, because you have a contact that's
25 substantial exposure from dermal contact.

Objection:
701 and
401

0

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01 Q. So, would -

02 A. And also possibly inhalation, if he didn't -
03 ingestion, if he doesn't wash his hands and he takes
04 food in. So, there's three ways a worker could be
05 exposed: Primarily through inhalation, second through
06 dermal absorption, and third through ingestion.

07 Q. And you at Mobil also did something called
08 biological monitoring for benzene, did you not?

09 A. Yes, we did.

10 Q. What does that mean, "biological monitoring"?

11 A. Monitoring means we measured the level of
12 benzene in individuals, how much he could expire in his
13 breath or we could take a blood sample or urine sample
14 and determine what metabolites from benzene would be
15 excreted this way. You can calculate how much benzene
16 was taken in.

17 Q. And that would be a reflection of the total
18 dose, not just what you breathe, correct?

19 A. Yes. You usually determine total dose for a
20 worker because breathing is only one of the ways that
21 he is exposed.

22 Q. And did Mobil use, also, something called
23 medical monitoring for its benzene exposed workers?

24 A. Yes. That was essential. We had people who
25 were exposed to one or more parts per million required

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objections
: Lines
1-25

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Continuing
objections

01 to undergo physical examination, to take more frequent
02 blood tests. I think it -- well, we had a policy to
03 that and procedure that is developed by medical
04 department to do medical monitoring to see if any
05 changes in his blood parameters; or if we see any
06 decrease in various blood cells, you remove the worker
07 from the job category because he may be more
08 susceptible.

09 Q. Have you seen evidence that medical monitoring
10 and biological monitoring for workers potentially
11 exposed to benzene in the workplace goes back into at
12 least the 1950s?

13 MR. MILLER: Objection, form.

14 A. It goes back all the way, but I'm not sure for
15 nineteen -- if I can recall specifically 1950. It goes
16 back at least I recall in the 1960. In fact, the
17 medical director at Beaumont has had that program --
18 one of them, that he was still there -- he was there
19 for quite awhile in 1976, '77 when I joined Mobil.

20 Q. (BY MR. HOBSON) So, at least to 1960 at
21 Mobil, you know about those.

22 A. That I have seen, yes, sir.

23 Q. I wanted to ask you -- you were asked some
24 questions about the use of Liquid Wrench at Mobil and
25 also about air sampling concerning Liquid Wrench usage

Objection: 802, 602, 701, and 402

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Continuing objection - Entire page

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01 at Mobil. Do you remember those questions generally?

02 A. Yes.

03 Q. If you'll look at exhibit -- well, I'll just
04 pick Exhibit 5, which is the same as one of the other
05 exhibits, same as Exhibit 2.

06 A. Yes.

07 Q. All right. Exhibit 2 or 5, on the second
08 page, you see in the first paragraph it says "We
09 suggest that the use of the material be discontinued
10 and an alternate be found"?

11 A. That's correct. I remember it because we
12 discussed the situation -- the products with above
13 1 part per million of benzene, we should find
14 alternatives.

15 Q. And is that something generally known as
16 substitution?

17 A. Correct.

18 Q. And substitution is where you take a material
19 that has a hazardous property and substitute for it one
20 that will do the same job but doesn't have the toxic
21 property?

22 A. That's correct.

23 Q. Now, if your advice at Mobil was taken here in
24 October of 1977, would there be any need to do any air
25 sampling for Liquid Wrench at Mobil facilities after

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01 October, 1977?

02 MR, MILLER: Strike that -- I -- object
03 to the form.

04 A. If the product was no longer used, there's
05 nothing to be monitored.

06 MR. HOBSON: Thank you, Dr. Mehlman.
07 That's all I have.

08 REEXAMINATION

09 BY MR. LYNN:

10 Q. Just a couple of quick follow-ups. Take a
11 look at this document.

12 A. Let's see.

13 Q. Doctor, I handed you back Exhibit No. 4.
14 don't think we really talked too much about that
15 document.

16 You are not shown as a recipient or copied on
17 that document, were you?

18 A. That's correct.

19 Q. When did you first become aware of this
20 document?

21 A. I would say October, 1977.

22 Q. In what circumstance would it have been
23 brought to your attention?

24 A. Anything that had to do with benzene would be
25 given to us because at that time I was responsible for

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01 establishing policy and monitoring and making
02 recommendation on all subject matters related to
03 benzene.

04 Q. Do you know who R.E. Bistline is?

05 A. I don't recall his name. E.P. Medlin,
06 certainly name is coming back to me; but I don't know
07 what his job was.

08 Q. Do you recall E.D. Keiper?

09 A. No, I don't recall the name; but I'm sure I
10 knew these people -- or their name -- by names at
11 least.

12 Q. Do you know who Doug Leitch is?

13 A. Who?

14 Q. Doug Leitch, the first -- at the beginning of
15 the paragraph of the text, it says "Doug Leitch advised
16 me." Do you know who Doug Leitch is?

17 A. No, I'm not sure who he is. They had 30,000
18 employees; and many of them were in products, safety,
19 and different divisions, production, manufacturing.
20 So, I don't remember his name.

21 Q. That's okay. The document mentioned that
22 there was another company's concern about potential
23 benzene concentration in Liquid Wrench. Do you know
24 what other company they were talking about?

25 A. No, I do not know that.

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01 Q. Okay. You see the last sentence of that first
02 paragraph says that "This information was relayed to
03 Corporate Safety for their confirmation and
04 recommendations." Do you know who at corporate safety
05 would receive this type of information at that time
06 frame?

07 A. Oh, yes, yes. That would be a lot of people.
08 I knew everybody at one time in corporate. Dave Miller
09 would be the head of corporate safety.

10 Q. Do you know anybody else that might have been
11 told about this?

12 A. No. I would say there were number of other
13 people. I don't remember their names, but I -- the
14 name that came back to me who -- is David Miller, who
15 was the head of that department. He was corporate -
16 in charge of corporate safety.

17 Q. Do you know whether corporate safety was ever
18 able to confirm the findings that were sent to them?

19 A. I don't know.

20 Q. And Mr. Hobson just asked you some questions
21 about substitution of products. Do you recall that
22 testimony?

23 A. Yes.

24 Q. Was there a concern that if there was a
25 product with greater than 1 percent benzene content

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01 that was being used, that that would require
02 monitoring?

03 A. I think that was the requirement, that medical
04 monitoring would be required of concentration above 1
05 percent, 1 or above.

06 Q. And when there were discussions about
07 substituting another product for Liquid Wrench, do you
08 know if that was in order to avoid having to comply
09 with monitoring requirements?

10 A. No, it was because the benzene exposure was
11 too high, which means that somebody else can get
12 injured, develop leukemias, lymphomas, or any other
13 type of cancers; and that presents tremendous liability
14 on part of the company.

15 MR. MILLER: I'm going to move to strike
16 the last response as being absent foundation.

17 (EXHIBIT 6 MARKED)

18 THE VIDEOGRAPHER: Excuse me. While
19 you-all are looking at that, can I change the tape,
20 please?

21 MR. LYNN: Sure.

22 THE VIDEOGRAPHER: Okay. Going off the
23 record. The time is 12:37.

24 (A BREAK WAS TAKEN)

25 THE VIDEOGRAPHER: Back on the record at

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01 12:38.

02 Q. (BY MR. LYNN) Doctor, can you please describe
03 the document that was handed to you as Exhibit 6, for
04 the record?

05 A. A memo to number of people from C.W. Phillips,
06 benzene in Liquid Wrench.

07 Q. What's the date of the document, for the
08 record?

09 A. November 29, 1977; and this was mailed by
10 Wescoat, Wescoat -- coat, Wescoat.

11 Q. Okay. In the middle paragraph -

12 A. I see that, yes.

13 Q. -- they talk about recommending -- or saying
14 that "You may wish to replace 'Liquid Wrench' with a
15 low-benzene content material." Do you see that part?

16 A. Yes.

17 Q. Okay. The last sentence of that paragraph,
18 what does it say about why that substitution might be
19 done?

20 A. "This product has been analyzed by Research's
21 Analytical Department and was found to contain 0.01
22 weight percent benzene. Thus, its use would not be
23 covered by the Emergency Temporary Standard."

24 Q. Okay. And does the emergency temporary
25 standard relate to monitoring?

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01 A. Emergency temporary standard was a way to
02 implement benzene starting it immediately until the
03 full standard is developed.

04 Q. All right.

05 A. It relates to essentially everything that
06 benzene standard relates to.

07 Q. Okay. But the -- it's that standard that
08 would require the monitoring be done.

09 A. Yes.

10 Q. And in the Exhibit 5 or Exhibit 2 -- we have
11 duplicates there -- on that second page that Mr. Hobson
12 was discussing with you, it again mentions that where
13 you've got a product containing more than 1 percent
14 benzene, you then have to take into consideration
15 requirements that monitoring be done, correct?

16 A. Yes.

17 Q. Does it say anywhere on the document there
18 that -- well, on either of those two documents -- that
19 the substitution of a lower or nonbenzene containing
20 product was being recommended to make sure that the
21 workers weren't being exposed?

22 A. I'm sorry. I didn't quite understand your
23 question you suggested.

24 Q. Okay. The document mentions that substitution
25 should be made to bring the levels down below the

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01 threshold for monitoring, correct?

02 A. Yes, an alternative should be found, same
03 thing, substitution.

04 Q. Now, the document does not say we should be
05 substituting these materials because it's more healthy
06 for the workers, does it?

07 A. Well, if you lower the level, it implies that
08 it will be safer product. It doesn't mean it's safe,
09 but certainly it would be considerably safer.

10 Q. But when the words were chosen to go into the
11 corporate documents that we're looking at here today,
12 the concern that was reflected by the words used in the
13 documents was the monitoring requirement; is that
14 correct?

15 A. That's what the document says by this
16 individual who wrote it.

17 MR. LYNN: That's all my questions.

18 Thank you.

19 MR. MILLER: I just have quick follow-up.

20 (EXHIBIT 7 MARKED)

21 REEXAMINATION

22 BY MR. MILLER:

23 Q. Mr. Mehlman, I'm going to hand you what I've
24 marked as Exhibit No. 7 and ask if you can identify
25 this document for me, please.

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01 A. Yes. The subject here is "Benzene Monitoring
02 Program, Submission of Samples."
03 Q. It's dated August 18, 1977?
04 A. Yes.
05 Q. And you were a recipient of this document?
06 A. Yes.
07 Q. And it was authored by Lester Levin; is that
08 correct?
09 A. Yes.
10 Q. And it refers to periodic benzene monitoring
11 that was ongoing at that time in Mobil facilities?
12 A. Yes.
13 Q. Was that monitoring similar to the dosimetry
14 that we talked about earlier in this deposition?
15 A. Yes.
16 Q. Okay. And do you know how frequently this
17 monitoring or dosimetry was being conducted by Mobil at
18 that time?
19 A. Oh, I don't recall. That was a -- they did a
20 lot of monitoring. Lester Levin worked for me.
21 Everything he did he reported to me and got my
22 approval, including acquisition of equipment,
23 personnel.
24 Q. I take it from this document and your
25 recollection that Mobil was conducting dosimetry on a

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01 periodic basis of employees who were working in
02 environments that may be contaminated with benzene.

03 A. Very limited before the emergency temporary
04 standard and very few samples, not as frequently as
05 became necessary to do after 1977 Federal Register
06 publication of emergency temporary standard on benzene.

07 Q. What was the date of the publication of the
08 emergency temporary standard?

09 A. It's in Federal Register, and I think the
10 date -- I don't know the date. I can give you the
11 Federal Register number. It's 1910.1028. I'm sure I
12 have many copies of that.

13 Q. Was the sampling that's discussed in what
14 we've marked as Exhibit No. 7, the Lester Levin -

15 A. Levin.

16 Q. -- memorandum, being conducted by Mobil in
17 response to the emergency temporary standard?

18 A. That's correct.

19 Q. And in August of 1977, was Liquid Wrench
20 available for use by Mobil employees in its facilities?

21 A. I can't answer that. I don't know.

22 Q. Was the recommendation made -- in the
23 documents we've looked at today made after August of
24 1977?

25 A. I can't tell you what month. I just don't

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01 know.

02 Q. We talked earlier in the deposition about
03 recommendations from individuals at Mobil to substitute
04 other products for Liquid Wrench.

05 A. Then, it would be after emergency temporary
06 standard.

07 Q. The October 12, 1977, memorandum, for example,
08 refers to a recommendation for substituting products
09 for Liquid Wrench.

10 A. That's correct.

11 Q. Were there individuals who were monitored
12 using dosimetry, as we've discussed earlier in the
13 deposition, being -- strike that.

14 There were individuals who worked with Liquid
15 Wrench in Mobil facilities that had been monitored for
16 their benzene exposure prior to the recommendation for
17 the substitution of that product?

18 MR. HOBSON: Objection, form.

19 A. I don't know. I don't know. The person who
20 can answer that -- that would be in Mobil records
21 because individual by different job categories would be
22 listed and their exposure.

23 Q. All right.

24 MR. MILLER: I don't have any further
25 questions, sir. Thank you.

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01 MR. HOBSON: Completes the deposition.
02 THE WITNESS: Thank you.
03 THE VIDEOGRAPHER: We're off the record
04 at 12:47.
05 THE REPORTER: Do you want to read and
06 sign?
07 THE WITNESS: Yes, I do.
08
09 (THE DEPOSITION WAS CONCLUDED)

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Exhibit 7

Transcript Report

Monique, Mark

Plaintiffs' designations are in yellow, there are no counter designations

Transcript of Monique, Mark

Full Transcript Report

Designation Legend

MONIQUE, MARK - (LEE) VOL 1

Transcript of Monique, Mark

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Page 1

01 COURT OF COMMON PLEAS
02 PHILADELPHIA COUNTY
03 - - -
04 ESTATE OF JACK E. LEE, : APRIL TERM,
05 Plaintiffs, : 2015
06 :
07 vs. : No. 2504
08 :
09 UNITED STATES STEEL :
10 CORPORATION, et al., :
11 Defendants. :
12

13 - - -
14 July 21, 2016
15 - - -

16
17 Videotaped Deposition of MARK
18 MONIQUE, taken pursuant to Notice at the Law
19 Offices of Swartz Campbell, LLC, Two Liberty
20 Place 50 South 16th Street, Philadelphia,
21 Pennsylvania 19102, beginning at 9:30 a.m.,
22 before Brigitte A. Strain, a Federally
23 Certified Registered Professional Reporter and
24 a Notary Public.
25 - - -

26
27
28
29
30
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Transcript of Monique, Mark

Monique, Mark
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Page 2

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3

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11

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13 Video Technician

14

15

16

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05 (None)

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20 (None)

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23

24

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01 MARK MONIQUE
02 VIDEO TECHNICIAN: We're now on
03 the record.
04 My name is Russ Strain,
05 representing Veritext Legal Solutions.
06 The date today is July 21st,
07 2016. The time is approximately 9:30
08 a.m.
09 This deposition is being held at
10 the office of Swartz Campbell, 50
11 South 16th Street, Philadelphia, PA.
12 The caption of this case is the
13 Estate of Jack E. Lee versus United
14 States Steel Corporation, et al.,
15 filed in the Court of Common Pleas of
16 Philadelphia County, April Term 2015,
17 Case Number 2504.
18 The name of the witness is Mark
19 Monique.
20 If counsel at this time will
21 please identify themselves for the
22 record.
23 MR. DuPONT: Andrew DuPont for
24 the Plaintiffs.
25 MR. DOUGHERTY: Stephen

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01 MARK MONIQUE
02 Dougherty for Hunt Refining Company.
03 MR. McDERMOTT: Jack McDermott
04 for ExxonMobil, Chevron and Unocal.
05 MR. SILVERMAN: Zachary
06 Silverman for Ashland and Univar.
07 MR. BUSCH: Christine Busch for
08 Savogran.
09 MR. MOUNTAIN: Chad Mountain for
10 Sunoco, Inc. (R&M).
11 MR. WALKER: Richard Walker for
12 Berryman Products.
13 VIDEO TECHNICIAN: Counsel on
14 the phone?
15 MS. KNUDSEN: This is Meredith
16 Knudsen for Shell Oil.
17 MR. LIGON: This is Cheves Ligon
18 for Safety-Kleen Systems.
19 MS. DALOIA: Andrea Daloia for
20 Witco Corporation, improperly sued as
21 Witco Distribution, Inc.
22 MR. WETZLER: Ernie Wetzler for
23 Genuine Parts Company.
24 VIDEO TECHNICIAN: The court
25 reporter is Brigitte Strain of

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01 MARK MONIQUE
02 Veritext. Will the court reporter
03 please swear in the witness.

04 - - -

05 MARK MONIQUE, after having been
06 first duly sworn, was examined and
07 testified as follows:

08 - - -

09 EXAMINATION

10 - - -

11 VIDEO TECHNICIAN: Testimony can
12 now proceed.

13 MS. BUSCH: Andrew, I'm sorry, I
14 didn't mean to interrupt. Before we
15 begin, I just want to reserve the
16 right to read and sign.

17 BY MR. DuPONT:

18 Q. What is your name, please?

19 A. My name is Mark Monique.

20 Q. Who are you employed by?

21 A. Savogran Company.

22 Q. What is your position with
23 Savogran Company?

24 A. I'm the president.

25 Q. What is your work history with

MONIQUE, MARK
- (LEE) VOL 1

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Monique, Mark

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01 MARK MONIQUE
02 Savogran Company?
03 A. I started in 1987 as a chemist.
04 In 1988 I became the technical director. And
05 then in 2007 I became the president.
06 Q. I understand you've given a
07 deposition before.
08 A. Yes.
09 Q. On how many occasions?
10 A. Two.
11 Q. You're probably familiar with
12 the procedures that we use in a deposition,
13 but I'll review them with you so that we have
14 a clean record.
15 A. Uh-huh.
16 Q. If at any point in time I ask
17 you a question and you do not hear it or
18 understand it, will you agree to let me know?
19 A. Sure. Yes.
20 Q. If I do ask a question and you
21 answer it, will you agree that you answered
22 the question because you heard it and you
23 understood it?
24 A. Yes.
25 Q. Please let me finish my

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01 MARK MONIQUE
02 question before you begin your response. We
03 have a court reporter, her job becomes
04 difficult when she's writing down two people
05 talking at the same time. So if you'll allow
06 me to finish my question before you begin
07 your response, I would appreciate that.

08 A. Certainly.

09 Q. If I remind you from time to
10 time --

11 A. Uh-huh.

12 Q. -- to just wait until I finish
13 my question --

14 A. Okay.

15 Q. -- I'm not being rude, I just
16 want to make sure we have a clean record.

17 A. Okay.

18 Q. Your responses should be
19 verbal. Even though we have a video camera
20 here today, nods of the head, shakes of the
21 head, uh-huhs, uh-uhs aren't written down
22 well. So if you could say yes, no or other
23 verbal response, I would appreciate that.

24 A. Okay.

25 Q. We don't want you to guess in

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01 MARK MONIQUE
02 response to any questions, so please answer
03 based on personal knowledge you have or
04 information that you gathered in order or
05 testify today.
06 A. Okay.
07 Q. If at any point in time you
08 need a break, please let me know.
09 A. Uh-huh.
10 Q. I only ask that you answer any
11 question that's pending before we take a
12 break.
13 A. Okay.
14 Q. You're here to testify on
15 behalf of the Savogran Corporation today?
16 A. Yes.
17 Q. And I said the Savogran
18 Corporation. Is it Savogran Company?
19 A. Savogran Company. Uh-huh.
20 Q. So you are the representative
21 of the Savogran Company?
22 A. Yes.
23 Q. And you are the president?
24 A. Yes.
25 Q. And you told me that you began

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Rhyne Trial Master

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01 MARK MONIQUE

02 with the Savogran Company in 1987 as a
03 chemist. Is that correct?

04 A. Correct.

05 Q. What was your educational
06 history before then?

07 A. I have a Bachelor of Science in
08 chemistry.

09 Q. Where did you obtain that?

10 A. Brittingham State College.

11 Q. In what year?

12 A. That was 1985.

13 Q. How did you come to work for
14 Savogran?

15 A. It's actually pretty
16 interesting. It's a very interesting
17 question. I was actually recruited to work
18 for Savogran by Ashland Chemical.

19 Q. How did that happen?

20 A. The -- there was a salesman
21 that was -- had a very close relationship
22 with my boss at the time that worked for
23 Ashland. And -- and he knew I was looking
24 for -- to change -- to change positions with
25 the company I was with before that. So he

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01 MARK MONIQUE
02 recruited me to interview with Savogran.
03 Q. Who was the company that you
04 were with before the Savogran Company?
05 A. It was Camger Chemical Systems.
06 Q. And there was an Ashland sales
07 representative that became involved in
08 recruiting you to the Savogran --
09 A. Yes. Yeah.
10 Q. What was the name of the
11 Ashland sales representatives?
12 A. It was -- his last -- it was
13 Warren Fish.
14 Q. How do you spell Fish?
15 A. F-I-S-S -- F-I-S-H.
16 Q. And Warren Fish from Ashland
17 had a relationship with the Savogran Company?
18 A. Well, with my boss at the time.
19 Q. Who was your boss at that time?
20 A. John Gale, G-A-L-E.
21 Q. And John Gale was your boss at
22 the Savogran Company?
23 A. Yes.
24 Q. What was the relationship
25 between Warren Fish of Ashland and John Gale

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Page 17

01 MARK MONIQUE

02 at Savogran?

03 A. They were friends.

04 Q. Was Warren Fish selling Ashland
05 products to the Savogran Company?

06 A. Yes.

07 Q. And how did you come to learn
08 that Warren Fish was selling products to the
09 Savogran Company?

10 A. Well, just when I -- I guess he
11 told me. I can't really -- you know, don't
12 know specifically.

13 Q. You had a conversation with Mr.
14 Fish and you learned Mr. Fish --

15 A. I wouldn't --

16 Q. -- was selling products to the
17 Savogran Company?

18 A. I would think so, yeah.

19 Q. How long had Mr. Fish been
20 selling products to Savogran as a
21 representative of Ashland?

22 A. I don't know.

23 Q. Had long had Mr. Fish and John
24 Gale had this friendship before you began
25 with the company in 1987?

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01 MARK MONIQUE
02 A. I'm not sure.
03 Q. Did Ashland continue to sell
04 products to the Savogran Company when you
05 began your employment in 1987?
06 A. Yes.
07 Q. And what chemicals were they
08 selling to Savogran Company?
09 A. They sold us a whole variety of
10 different, you know, products, chemicals.
11 Q. Was it your understanding, when
12 you started in 1987, that Ashland had been
13 selling chemicals to the Savogran Company for
14 a period of time before you began with the
15 company?
16 A. Yes. That's a reasonable
17 statement.
18 Q. How did you come to meet Warren
19 Fish from Ashland?
20 A. I just knew him from the
21 industry.
22 Q. From your prior employment?
23 A. Right. Yeah.
24 Q. Tell me again the name of the
25 company you worked for before the Savogran

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01 MARK MONIQUE
02 Company.
03 A. Camger Chemical Systems,
04 C-A-M-G-E-R.
05 Q. What type of company was Camger
06 Chemical Systems?
07 A. They make paint. Paint and
08 coatings.
09 Q. If you could please just let me
10 --
11 A. Right. I'm sorry.
12 Q. -- finish my question before
13 you begin your response.
14 Okay. So you worked for Camger
15 --
16 A. Uh-huh.
17 Q. -- Chemical Systems?
18 A. Yes.
19 Q. And they made paint and coating
20 products?
21 A. Yes.
22 Q. Where were they located?
23 A. They were in Norfolk,
24 Massachusetts.
25 Q. When did you start working for

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Page 20

01 MARK MONIQUE
02 them?
03 A. I only worked there a year.
04 Year, year and a half.
05 Q. So it was between graduating
06 college in 1985 --
07 A. No, I -- before -- I -- I guess
08 -- let me start from the beginning, make it
09 simple. I did 25 years in the National
10 Guard. I did -- I retired as a Lieutenant
11 Colonel. During college I was -- you know, I
12 did ROTC. I got commissioned second
13 lieutenant. So when I graduated college I
14 went on active duty for training. So I was
15 -- I was on active duty for about six months.
16 I came back and I worked for about a year for
17 a company call SANCora. They made water
18 based polyurethanes. I was an application
19 chemist there. So I spent, I don't know,
20 roughly a year there before I went to Camger.
21 And then from -- and then from -- you know,
22 so I was in the Army. When I graduated
23 college, I spent a little time in the Army.
24 Left there, went to SANCora for a short
25 amount of time as an application chemist

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01

MARK MONIQUE

02

working on water based urethanes. And then

03

left there and went to Camger Chemical

04

Systems for a short amount of time. And then

05

that's when I ended up at Savogran.

06

Q. So in terms of your employment

07

--

08

A. Uh-huh.

09

Q. -- in the chemical and coatings

10

industry --

11

A. Yeah.

12

Q. -- you graduate college in 1985

13

as a chemist.

14

A. Correct. Yeah.

15

Q. Your first job in the chemical

16

and coatings industry is with SANCora for a

17

short period of time?

18

A. Yes.

19

Q. And they were a company that

20

made water based polyurethanes?

21

A. Yes.

22

Q. And you worked as an

23

applications chemist there?

24

A. Yes.

25

Q. And then you take a position

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01 MARK MONIQUE
02 with Camger Chemical Systems?
03 A. Yes.
04 Q. And they made paint and coating
05 products?
06 A. Yes.
07 Q. And then in 1987 you start with
08 the Savogran Company?
09 A. Yes.
10 Q. And you worked for the Savogran
11 Company from 1987 to the present?
12 A. Yes.
13 Q. You were first a chemist from
14 1987 until 19 --
15 A. Till '88. It was essentially
16 the same job, just a different title. Yeah.
17 Q. And then you were the technical
18 director --
19 A. Right.
20 Q. -- from 1988 until 2006. And
21 then you became --
22 A. 2007.
23 Q. 2007. In 2007, you became the
24 president, and you've been the president
25 since?

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Page 23

01 MARK MONIQUE

02 A. Yes. Uh-huh.

03 Q. I understand that the Savogran
04 Company has been in business since 1875?

05 A. Yes. It's a very rich history.
06 Started out as the India Alkaline Company.
07 It was on -- actually on India Wharf in
08 Boston. Made -- the company made granulated
09 soaps that were sold into textile mills,
10 schools, institutions. The word Savogran
11 used to be -- actually used to be a product.
12 And it was savo for soap and gran for
13 granulated. So Savogran was granulated soap.
14 And that's how it got its beginning.

15 But actually currently we're
16 kind of an unusual company in the sense that
17 we're a hundred percent employee owned, we're
18 an ESOP.

19 In 1987, the -- the descendants
20 of the founder, Stoddard, wanted to diversify
21 their portfolio. So using the tax benefits
22 of an ESOP, they sold the company to the --
23 to the employees. And they sold -- the
24 unusual part about that is, they sold a
25 hundred percent of the company to the

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01 MARK MONIQUE
02 employees. So our employees actually every
03 year elect a Board of Directors. So, you
04 know, we're -- right now there's nine of us
05 that are ESOP stockholders. And, you know,
06 we're just regular Joes, you know, just
07 trying to scratch out a living in a very
08 tough economic time with -- dealing with
09 cutthroat retailers. And, you know, it's
10 just -- just trying to keep the legacy going
11 of this very small company.

12 MR. DuPONT: Motion to strike
13 the non-responsive portion.

14 BY MR. DuPONT:

15 Q. The Savogran Company started in
16 1875; correct?

17 A. Correct.

18 Q. And it started as an alkali
19 company that was making a soap product?

20 A. Yes.

21 Q. All right. And it was located
22 on the India Wharf in Boston at that time?

23 A. Yes.

24 Q. Then the Savogran Company got
25 into the business of manufacturing paint

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Monique, Mark

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01 MARK MONIQUE
02 removers; is that correct?
03 A. Yes.
04 Q. And, in fact, was Savogran
05 Company somewhat of a pioneer, one of the
06 first manufacturers of a paint remover
07 product?
08 A. Yes.
09 Q. So when did the Savogran
10 Company begin manufacturing paint remover
11 products?
12 A. 1938.
13 Q. And one of those paint remover
14 products was Kutzit?
15 A. Kutzit was -- to my
16 recollection, was not the first.
17 Q. But one of the Savogran
18 Company's paint removing products was -- was
19 Kutzit?
20 A. Yes.
21 Q. And it continues to be a
22 product that's manufactured and sold by the
23 Savogran Company?
24 A. Correct.
25 Q. When did the Kutzit product

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Monique, Mark

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01 MARK MONIQUE
02 come onto the market?
03 A. I'm not sure.
04 Q. I've seen reference to some
05 jobbers price lists --
06 A. Uh-huh.
07 Q. -- for the Savogran products.
08 A. Uh-huh.
09 Q. And the earliest one that was
10 produced to me by the Savogran Company was
11 dated July 15, 1949.
12 A. Okay.
13 Q. That lists Kutzit on it. Does
14 that refresh your recollection that by at
15 least 1949 The Savogran Company was
16 manufacturing and selling Kutzit?
17 A. Yes. But I don't know when it
18 actually started as a product. Right. Yeah.
19 Q. So at some point in time,
20 between 1938 and 1949, the Savogran Company
21 began manufacturing and selling Kutzit?
22 A. Yes.
23 Can I get some water?
24 MS. BUSCH: Off the record.
25 VIDEO TECHNICIAN: Off the

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01 MARK MONIQUE

02 record at 9:45.

03 - - -

04 (Discussion held off the

05 record.)

06 - - -

07 VIDEO TECHNICIAN: Back on the

08 record, 9:46.

09 BY MR. DuPONT:

10 Q. Was Kutzit one of many paint
11 removing products that Savogran began to
12 manufacture and sell in 1938?

13 A. I -- I don't think I would
14 state it was many. At that time I think
15 maybe they had three.

16 Q. And, over a period of time, did
17 the Savogran paint remover product line grow?

18 A. Not substantially, no.

19 Q. By how much did it grow?

20 A. We might have maybe a dozen
21 products. Paint remover products.

22 Q. Are all Savogran's products
23 that its manufactured and sold from the 1930s
24 to the present paint remover products, or are
25 there other lines of chemical products?

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 A. We have -- we -- we have our
03 line is primarily paint and varnish removers,
04 cleaners, patching compounds, tile grouts.

05 Q. Overall, how many products are
06 in the product line of Savogran over time?
07 Let's start with the 1930s and take us to the
08 present.

09 A. I have no idea. I mean,
10 there's products that have come and gone.
11 Yeah. That would be -- that would be a tough
12 one to throw a number on.

13 Q. Okay.

14 A. It's not a tremendous number
15 though, you know. Prob -- you know.

16 Q. Are you talking about dozens of
17 products?

18 A. Yeah, probably.

19 Q. So the Savogran Company starts
20 in Boston --

21 A. Uh-huh.

22 Q. -- and I see reference to a
23 Norwood, Massachusetts address?

24 A. Yes.

25 Q. Did the company eventually move

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 to Norwood, Massachusetts?
03 A. Yes. Yep.
04 Q. When did that happen?
05 A. I want to say it was in the
06 fifties.
07 Q. And Savogran also had business
08 locations in Addison, Illinois?
09 A. Yes.
10 Q. And Chicago, Illinois?
11 A. No. Just Addison, Illinois.
12 Q. Did Savogran have a business
13 location in Los Angeles, California?
14 A. Yes. But in the time frame
15 that you're talking about it wasn't actually
16 owned by Savogran.
17 Q. When did the Savogran Company
18 begin to do business at the Addison, Illinois
19 address?
20 A. Fifties.
21 Q. Was that a manufacturing
22 facility?
23 A. Yes.
24 Q. So, in the 1950s, in terms of
25 manufacturing facilities --

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 A. Uh-huh.
03 Q. -- the Savogran Company had
04 Norwood, Massachusetts?
05 A. Yes.
06 Q. And it also had Addison,
07 Illinois as a manufacturing facility?
08 A. Yes.
09 Q. And what type of facility was
10 Los Angeles?
11 A. That was a very small
12 manufacturing facility. And it wasn't --
13 like I said, it wasn't actually owned by
14 Savogran. It was owned by one of the -- it
15 was like a west coast sales guy that owned
16 it.
17 Q. Did the Savogran Company
18 manufacture products at the Los Angeles
19 facility?
20 A. No.
21 Q. Were products manufactured on
22 behalf of Savogran at the Los Angeles
23 facility?
24 A. No.
25 Q. What business did Savogran do

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 at the Los Angeles facility?

03 A. They -- they used -- they used
04 the Savogran name, but they were making --
05 making stuff for themselves. It was a
06 separate -- it wasn't owned by Savogran.

07 Q. Who was it owned by?

08 A. It was owned by -- it was the
09 west coast sales agent at the time.

10 Q. Did the --

11 A. I'm -- see, now you're getting
12 into things that, you know, are way before my
13 memory. Yeah.

14 The other thing, Andrew, is,
15 you know, the stuff that you're talking
16 about, your client was from North Carolina,
17 all that material, you know, that was --
18 would have come out of Norwood,
19 Massachusetts. It's -- Norwood shipped down
20 into the Carolinas. Addison would have
21 handled Texas, the Midwest and California.
22 You know, west coast.

23 MR. DuPONT: Move to strike the
24 non-responsive portion.

25 BY MR. DuPONT:

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01 MARK MONIQUE
02 Q. So by the 1950s, is it fair to
03 say that the Savogran Company was selling its
04 products nationwide?
05 A. Yes.
06 Q. When did the Savogran Company
07 begin to sell its products nationwide?
08 A. I don't know.
09 Q. Did the Savogran Company sell
10 its products internationally?
11 A. Caribbean.
12 Q. When did it begin selling
13 products into the Caribbean?
14 A. I don't know.
15 Q. Was it selling products into
16 the Caribbean by the 1950s?
17 A. I have no idea.
18 Q. How did you come to learn that
19 the Savogran Company was selling products
20 into the Caribbean?
21 A. We do now.
22 Q. Now, the Kutzit product, was
23 that manufactured at both the Norwood,
24 Massachusetts and the Addison, Illinois
25 facility since the 1950s?

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 A. Yes.

03 Q. Do you know what volume of
04 Kutzit was being manufactured on an annual
05 basis in the 1950s, 1960s, 1970s?

06 A. No.

07 Q. How were Kutzit products
08 marketed and sold during the 1950s, 1960s,
09 1970s?

10 A. We sell, we still do to this
11 day, through mostly -- through distribution.
12 We sell to the hardware co-ops, like Ace
13 Hardware, True Value, Do It Best. We sell to
14 -- back then, they did also through small
15 paint distributors that sold to like
16 independent paint stores.

17 Home Depot wasn't around in
18 those days, but some of the larger chains
19 they might have sold direct, not through a
20 distributor. But in the -- I think the time
21 frame that you're talking about, probably
22 most of the business was probably done
23 through a distributor.

24 Q. And did Savogran know where
25 those distributors, in turn, sold Savogran

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 products?
03 A. No.
04 Q. Now, the Kutzit product, that
05 was a -- a product that was marketed to
06 consumers for consumer use?
07 A. Yes. Uh-huh.
08 Q. And in the 1950s, 1960s and
09 1970s, it's a type of product that you would
10 expect somebody could find in a general store
11 or a local hardware store, something like
12 that?
13 A. Not so much a general store,
14 but, you know, definitely a hardware store or
15 paint store.
16 Q. If the store sold paint related
17 products or solvent related products, that's
18 the type of store that you would expect to
19 find Savogran being sold in during the
20 fifties, sixties and seventies?
21 A. Yes.
22 Q. Do you know how the Kutzit
23 product was developed?
24 A. No. No.
25 Q. Now, understanding that you

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 began with the company in 1987 --

03 A. Uh-huh.

04 Q. -- have you undertaken an

05 investigation to learn about Savogran's

06 business and what happened at the company

07 before 1987?

08 A. Could you repeat that?

09 Q. Yeah.

10 A. Sorry.

11 Q. You began with Savogran in

12 1987; right?

13 A. Yeah. Yep. Right.

14 Q. So have you tried to educate

15 yourself and learn about what happened at the

16 company before 1987?

17 A. Yes.

18 Q. What have you done in order to

19 learn that?

20 A. Records. Just go through the

21 records that we could find.

22 Q. Have you spoken to any former

23 employees or current employees at Savogran to

24 learn what happened before your time?

25 A. Yes.

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01 MARK MONIQUE
02 Q. Who is that?
03 A. Tom Little.
04 Q. Any others?
05 A. That's it.
06 Q. And beginning in 1987 at
07 Savogran, did you have conversations with
08 your coworkers, people that you worked for
09 and with at Savogran, in which you learned
10 about the history of the company?
11 A. Yes.
12 Q. Who were some of those people?
13 A. Well, we have, you know, John
14 Gale, he was my former boss. Steve McLane.
15 Q. So one of the -- one of the
16 names you mentioned was Tom Little.
17 A. Yes.
18 Q. Who is Tom Little?
19 A. He's my vice president of
20 operations.
21 Q. How long has Tom Little been
22 with Savogran?
23 A. He started in 1972.
24 Q. Where does he work?
25 A. He works at Norwood.

Transcript of Monique, Mark

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01 MARK MONIQUE
02 Q. How old is Mr. Little?
03 A. I'm not sure.
04 Q. Is John Gale still employed by
05 Savogran?
06 A. He's deceased. He was retired
07 -- he retired and then just passed away.
08 Yep.
09 Q. Steve McLane, is he still
10 employed with --
11 A. Yes.
12 Q. -- Savogran?
13 A. Yep.
14 Q. What's his position?
15 A. He's vice president of sales.
16 Q. When did Steve McLane begin
17 with Savogran?
18 A. He -- he came -- he actually
19 came to us when Savogran bought the stock of
20 the California operation. So that was
21 probably 10, 15 years ago.
22 Q. About 19 -- excuse me, about
23 2001?
24 A. Something like that, yeah.
25 Q. So it was around 2000, 2001,

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 that Savogran bought the stock of the company
03 that was out of Los Angeles?
04 A. Yes. Uh-huh.
05 Q. And this was a company that was
06 -- had an affiliation with the Savogran
07 Company before 2001?
08 A. Yes.
09 Q. And, in fact, on marketing
10 materials, have you seen that before 2001
11 Savogran advertised that it had a facility in
12 Los Angeles?
13 A. Yes.
14 Q. So that would be referring to
15 -- to this facility and this operation that
16 it bought in 2001?
17 A. Right. Yes. Well, like I
18 said, I don't know if it was exactly 2001.
19 It's in that time period, yeah.
20 Q. What was Steve McLane's
21 position with the -- strike that.
22 What was the name of the entity
23 in Los Angeles?
24 A. I think it -- I'm not sure.
25 I'm not going to guess on that one.

Transcript of Monique, Mark

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01 MARK MONIQUE

02 Q. What was Steve McLane's
03 position at the Los Angeles operation?

04 A. He was the manager.

05 Q. Do you know when he started
06 there?

07 A. I don't.

08 Q. And he is still with Savogran?

09 A. Yes.

10 - - -

11 (Whereupon the document was
12 marked, for identification purposes,
13 as Monique Exhibit Number 1.)

14 - - -

15 BY MR. DuPONT:

16 Q. I'm going to hand you
17 Exhibit 1.

18 A. Thank you.

19 Q. Exhibit 1 are documents that
20 are Bates Number Savogran 4 through 19. And
21 they appear to be jobbers' price lists. Is
22 that correct?

23 A. Yes.

24 Q. And the first jobbers price
25 list in Exhibit 1 says, "Effective July 15,

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Monique, Mark

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01 MARK MONIQUE
02 1949." Do you see that?
03 A. Yes, uh-huh.
04 Q. And on this jobbers' price list
05 we see the Kutzit liquid remover?
06 A. Yes.
07 Q. And at the bottom of the price
08 list there's the Savogran Company name with
09 an address at 60 West Superior Street,
10 Chicago, Illinois. Do you see that?
11 A. Yes.
12 Q. What -- do you know what
13 Savogran did at the Chicago, Illinois address
14 that's listed there?
15 A. I do not.
16 Q. Earlier I had asked you whether
17 Savogran had a facility in Chicago, Illinois.
18 A. Uh-huh.
19 Q. Does this refresh your
20 recollection that it did have a Chicago
21 address?
22 A. No.
23 Q. Do you have any reason to
24 dispute that Savogran Company had a Chicago
25 address in 1949?

Transcript of Monique, Mark

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01 MARK MONIQUE

02 A. To be honest with you, that's
03 the first time I've seen that and noticed it.
04 And I've never heard any talk about any other
05 address besides the Addison address.

06 Q. And then there's also a 25
07 Huntington Avenue, Boston, Massachusetts
08 address?

09 A. Yes.

10 Q. Do you know what Savogran did
11 at that Boston address?

12 A. I don't.

13 Q. And there's reference to the --
14 what they call the Boston plant in Norwood,
15 Massachusetts?

16 A. Right.

17 Q. That's one of the manufacturing
18 facilities?

19 A. Yes.

20 Q. And on this jobbers' price list
21 there's a number of paint remover products
22 that are listed here. At least -- at least
23 four of them; is that right?

24 Excuse me, let me correct that.
25 On the 1949 jobbers' price list there are two

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01 MARK MONIQUE

02 paint remover products and a third paint
03 remover that's called Savablaze
04 Non-Inflammable Remover?

05 A. Yes.

06 Q. So there's three paint removers
07 and one liquid brush cleaner?

08 A. Yes.

09 Q. And out of the three paint
10 removers, Kutzit appears to be the least
11 expensive of the three?

12 A. Yes.

13 Q. And if we take a look through
14 these product lists and price listing for
15 Savogran, these go from the period of 1949
16 through 1976. It appears that the Kutzit is
17 the least expensive of the paint remover
18 products that Savogran has sold throughout
19 this period of time. Is that correct? Take
20 a moment and look through it.

21 A. (Complying with request.)

22 That's correct.

23 Q. And the Kutzit product, during
24 the periods of time, was manufactured with
25 benzene as an ingredient; right?

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 MS. BUSCH: Object to form.
03 THE WITNESS: What time frame?
04 BY MR. DuPONT:
05 Q. Well, we're going to get to
06 that. But is it correct that the Kutzit
07 product was manufactured during periods of
08 time with benzene as an ingredient? Is that
09 correct?
10 A. Yes. Uh-huh.
11 Q. And what's your understanding
12 as to the years during which Kutzit had
13 benzene as an ingredient?
14 A. The -- 1963 through 1973.
15 Q. What percentage of the
16 product -- between 1963 and 1973, what
17 percentage of its formula was pure benzene?
18 A. Can we dig out one of the
19 formula?
20 - - -
21 (Whereupon the document was
22 marked, for identification purposes,
23 as Monique Exhibit Number 2.)
24 - - -
25 BY MR. DuPONT:

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01 MARK MONIQUE
02 Q. I'm handing you Exhibit 2.
03 A. Uh-huh.
04 Q. Exhibit 2 is Bates Number
05 Lee-Savogran 67; is that correct?
06 A. Yes.
07 Q. What is Exhibit 2, please?
08 A. Oh, you want me to say what it
09 is?
10 Q. Yes, what is Exhibit 2, please?
11 A. I'm sorry, Andrew. It's Kutzit
12 Formula KT-F252-E63. And it's dated May
13 10th, 1963.
14 Q. And the earlier version of the
15 Kutzit formula that was produced to us was
16 dated October 2, 1956. I want to mark that
17 as Exhibit 3.
18 - - -
19 (Whereupon the document was
20 marked, for identification purposes,
21 as Monique Exhibit Number 3.)
22 - - -
23 THE WITNESS: Thank you.
24 BY MR. DuPONT:
25 Q. So Exhibit 3 is Lee-Savogran

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 66; is that right?

03 A. Yes.

04 Q. And Exhibit 2 is dated

05 October 2, 1956?

06 A. Yes.

07 Q. Strike that.

08 The earlier version of the
09 Kutzit formula that we've have marked as
10 Exhibit 3 is dated October 2, 1956; is that
11 correct?

12 A. Yes.

13 Q. And in this formula benzene
14 isn't listed as an ingredient; right?

15 A. Yes.

16 Q. Do you know when it was,
17 between October 2, 1956 and May 10, 1963,
18 benzene began to be used as an ingredient in
19 Kutzit?

20 A. No.

21 Q. Do you know if the -- strike
22 that.

23 Do you know why it was there
24 was a substitution to add benzene as an
25 ingredient in the Kutzit product at some

MONIQUE, MARK
- (LEE) VOL 1

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE

02 point between 1956 and 1963?

03 A. No.

04 Q. What was used instead of
05 benzene before 1963 in Kutzit?

06 A. Methylene chloride is the
07 difference in the -- methylene chloride and
08 toluene are the difference. But we'd have to
09 know what the solvent PM 4088 is on the May
10 1963 formula, which, if you took a look at
11 the label that corresponds to this 1963
12 label, then we can figure out what the
13 ingredients were and then compare it to this
14 formula here.

15 Q. Okay. Was methylene chloride
16 an effective substitute for benzene in the
17 paint remover product?

18 A. It was a much more effective
19 replacement for benzene.

20 Q. So methylene chloride actually
21 worked a lot better than benzene for paint
22 removing?

23 A. I've never actually worked with
24 a benzene remover, so I guess I wouldn't be
25 qualified to say that.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, misstates facts, misstates testimony of Mr. Monique, lacks personal knowledge, and calls for an expert opinion

6

MONIQUE, MARK
- (LEE) VOL 1

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE

02 Q. Based on your -- your
03 understanding of the chemical properties of
04 benzene and methylene chloride as a chemist,
05 what makes methylene chloride a much better
06 substitute for paint remover products than
07 benzene?

08 A. It's a real small molecule. So
09 it has a real good ability to diffuse through
10 the paint film.

11 Q. And why is that important for
12 paint removers?

13 A. Well, it gets through the -- it
14 gets through the paint film and releases the
15 bond between the paint and the substrate.

16 Q. And that helps the product work
17 better in removing paint?

18 A. Correct.

19 Q. Is methylene chloride also a
20 much safer chemical than benzene?

21 MS. BUSCH: Objection to form.

22 THE WITNESS: I wouldn't be
23 qualified to answer that.

24 BY MR. DuPONT:

25 Q. Benzene is a known human

Savogran objects to this designation on the grounds that it calls for an expert opinion, is beyond the scope and knowledge of the deponent, posed an incomplete hypothetical, calls for speculation, vague and ambiguous and lacks foundation.

O

MONIQUE, MARK
- (LEE) VOL 1

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 carcinogen; right?

03 A. Yes.

04 Q. Methylene chloride is not a
05 known human carcinogen; right?

06 MS. BUSCH: Object to form.

07 THE WITNESS: That -- we can
08 debate that for a whole other day.

09 BY MR. DuPONT:

10 Q. Okay. So at some point in
11 time, between 1956 and 1963, benzene is
12 substituted into the Kutzit formula. And
13 what percentage of the formula does benzene
14 become?

15 A. Well, I guess the first comment
16 I would make is, we don't actually have a
17 label that corresponds to the 1956 formula.
18 So I can't say definitively that this was
19 ever put into commerce. It just happens to
20 be a formula we found in the file.

21 The second part of your
22 question is, the Kutzit formula -- now,
23 benzol -- I've personally never been able to
24 understand or figure out if benzol was just
25 another name for benzene, or if benzol was a

Transcript of Monique, Mark

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01 MARK MONIQUE

02 mixture of benzene and something else. So if
03 your question is, what is the percentage of
04 benzol in the formula, you know, then -- you
05 know, without doing the math, it looks like
06 it was about a third.

07 So, you know, there's a lot of
08 unanswered questions there, you know, as far
09 as, you know, definitively telling you how
10 much benzene was in that formula, you know.

11 That's where I think if you go
12 back to the labels, look at the labels, you
13 can actually see the actual ingredients that
14 were in there.

15 Q. All right. So you think you
16 can look at a label and compare it to this
17 1963 formula for Kutzit and determine how
18 much benzene was --

19 A. Well, not how much. But it
20 will tell us -- it will tell us what the
21 solvent PM 4008 (sic) was comprised of. And
22 it will, you know, gives us a better
23 understanding of what -- you know, what that
24 is.

25 Q. Now, are you aware that benzol

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01 MARK MONIQUE
02 is used as a synonym for benzene, meaning
03 it's used as the same word for benzene?
04 A. I'm not. I'm not. I've
05 actually Googled that trying to figure that
06 out, and I haven't found anything, even
07 online about that.
08 Q. Now, the -- the October 2, 1956
09 formula that's Exhibit 3 --
10 A. Uh-huh. Yep.
11 Q. -- is this also in the format
12 of a batch ticket? Do you know what a batch
13 ticket is?
14 A. Yes.
15 Q. A batch ticket is instructions
16 for how a product is actually to be blended
17 and manufactured?
18 A. Yes.
19 Q. And is this 1956 document
20 that's marked as Exhibit 3, is this in the
21 format of a batch ticket that's actually --
22 gives you instructions of how you blend the
23 product to manufacture it?
24 A. Yes. Yeah.
25 Q. And it's logical to conclude

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01

MARK MONIQUE

02

that you would have a batch ticket for this

03

formula of Kutzit in 1956 because it was

04

actually being used as a formula at the time?

05

MS. BUSCH: Object to form.

06

THE WITNESS: Like I said, I

07

can't definitively tell you that that

08

was ever actually used to produce

09

product. It's certainly in the right

10

format and it certainly looks like it

11

could have been, I would agree with

12

that.

13

BY MR. DuPONT:

14

Q. Do you think it's more likely

15

than not that Kutzit was using this formula

16

of -- excuse me, strike it.

17

Do you think it's more likely

18

than not that Savogran was using the

19

October 2, 1956 formula that substituted

20

methylene chloride for benzene?

21

MS. BUSCH: Object to form.

22

THE WITNESS: It's possible,

23

yeah. Uh-huh.

24

BY MR. DuPONT:

25

Q. The Kutzit product itself was a

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Monique, Mark

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01 MARK MONIQUE
02 liquid product?
03 A. Yes.
04 Q. And it had a viscosity, a
05 thickness, that was similar to water?
06 A. Yes.
07 Q. It was a light blue in color?
08 A. Yes.
09 Q. Was that consistent throughout
10 the product's history, that it had this light
11 blue color, kind of watery consistency?
12 A. Yes.
13 - - -
14 (Whereupon the document was
15 marked, for identification purposes,
16 as Monique Exhibit Number 4.)
17 - - -
18 BY MR. DuPONT:
19 Q. I'm handing you Exhibit 4.
20 A. Okay.
21 Q. What is Exhibit 4?
22 A. Exhibit 4 is the document that
23 has a Kutzit formula on it, dated
24 November 20th, 1972. It's labeled Kutzit
25 (K 202).

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 Q. Is this a Kutzit formula that
03 was actually used by Savogran?

04 A. Not sure. Just it's a document
05 that we found in the file.

06 Q. Are you able to tell me what
07 percentage of the Kutzit formula that's
08 listed in 1972 was benzene?

09 A. So it would have been -- you
10 know, assuming that the benzol is a hundred
11 percent benzene, then it would have been
12 90 percent of 256 gallons.

13 Q. What does that mean for the
14 total percentage of the product?

15 A. Can I do the math on it?

16 Q. Yes.

17 A. Can I write on this?

18 Q. Absolutely.

19 A. So I'm guessing with the wax
20 that was in there, the total batch size was
21 probably around 460 gallons. So if you take
22 256 times -- so it was about 50 percent.

23 Q. So in 1972, in this formula,
24 the benzene is about 50 percent of the
25 contents of the Kutzit product?

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01 MARK MONIQUE

02 A. On -- yeah, volume. Yeah.

03 Uh-huh.

04 Q. And if we look at Exhibit 2,
05 which is the 1963 formula, if we add up the
06 volume of the four ingredients that are
07 listed, the solvent PM 4088, the methanol,
08 the benzol and the Ceresine Wax, my math says
09 that they add up to 488.

10 A. So that one is probably running
11 about 55 percent benzol.

12 Q. So the benzene content of the
13 Savogran product, between at least 1963 and
14 1973, was somewhere between 50 and 55
15 percent?

16 MS. BUSCH: Object to form.

17 THE WITNESS: I'm not sure if
18 this one ever went into production.
19 But, yeah, 50 percent. Right around
20 50 percent is a fair statement.

21 BY MR. DuPONT:

22 Q. When you say you're not sure if
23 this went into product --

24 A. Right.

25 Q. -- production, you're talking

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 about Exhibit 4, the 1972 version?

03 A. Yes. Uh-huh.

04 Q. But we can agree that around 50
05 percent of the chemical content of Savogran's
06 Kutzit product between 1963 at least and 1973
07 was benzene?

08 A. Yes.

09 MS. BUSCH: Object to the form.

10 BY MR. DuPONT:

11 Q. Have you learned from anybody
12 or seen any documents as to why benzene was
13 taken out of the Kutzit product after 1973?

14 A. No.

15 - - -

16 (Whereupon the document was
17 marked, for identification purposes,
18 as Monique Exhibit Number 5.)

19 - - -

20 BY MR. DuPONT:

21 Q. I'm going to hand to you
22 Exhibit 5.

23 A. Thank you.

24 Q. Is Exhibit 5 a November 16,
25 1973 formula for new Kutzit?

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01 MARK MONIQUE

02 A. Yes.

03 Q. And in this formula we see
04 methylene chloride substituted back in for
05 benzene?

06 MS. BUSCH: Object to form.

07 THE WITNESS: Yeah. Yes.

08 BY MR. DuPONT:

09 Q. And do you know how long after
10 November 16, 1973 Savogran Company actually
11 began to manufacture and produce Kutzit with
12 methylene chloride instead of benzene?

13 A. We still use this formula to
14 this day. Very close to that formula. Give
15 or take a few percentages on some of the
16 items.

17 Q. So this formula is dated
18 November 16, 1973, that has methylene
19 chloride in it; right?

20 A. Yes.

21 Q. And it's referred to as the new
22 Kutzit; right?

23 A. Yes.

24 Q. So that's when this formula
25 presumably was written. Do you know when the

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01

MARK MONIQUE

02

formula was actually first used after

03

November 16, 1973 to manufacture Kutzit?

04

A. No.

05

Q. And consistent with what you've

06

told me, looking at the formulas that are

07

Exhibit 2, Exhibit 5, and some of the other

08

exhibits, we see Sudan blue dye listed in

09

here, which would be consistent with what you

10

said, that the product had a light blue color

11

to it?

12

A. Yes.

13

Q. Did Savogran use blue dye in

14

order to kind of distinguish Kutzit from

15

other paint removers that were on the market?

16

A. No. Just giving it a little

17

bit of color.

18

Q. What's your understanding of

19

why Savogran used a blue dye?

20

A. Like just to give it a little

21

bit of color, you know, to make it look a

22

little -- you know, jazz it up a little bit.

23

Q. Were there other Savogran

24

products that had a blue color to them?

25

A. Yes.

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01 MARK MONIQUE

02 Q. Was that something of a -- kind
03 of a signature for Savogran, this blue color,
04 something that people associated with the
05 product?

06 MS. BUSCH: Object to form.

07 THE WITNESS: No. Because the
08 -- the number one selling product was
09 orange.

10 BY MR. DuPONT:

11 Q. What other Savogran products
12 had a blue color to them?

13 A. Super-Strip paint and varnish
14 remover.

15 Q. Any others?

16 A. Are you talking about just
17 paint removers or in general?

18 Q. In general.

19 A. Okay. Because we have a
20 wallpaper remover that has -- that's blue.
21 We had a concrete cleaner, we don't have it
22 anymore, but it used to be blue. We had a
23 waterless hand cleaner that was kind of a
24 blue-green. It started out blue, but as it
25 aged it got green. Hence, why we don't have

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01 MARK MONIQUE

02 it anymore.

03 Q. When did Savogran begin to
04 manufacture and sell Super-Strip paint
05 varnish remover?

06 A. I'd have to look at the -- the
07 price list.

08 Q. Do you have that in front of
09 you still, Exhibit 1?

10 A. You didn't give -- you didn't
11 give me all of them. No, I don't think I do.

12 Q. I gave you a price list that
13 went up to 1976.

14 A. Okay.

15 (Reviewing document.)

16 In '68 they had Strypeeze --
17 I'm looking at 1968. It's the document
18 marked 13, Savogran 13. You see the product
19 called Strypeeze Paint Remover Nonflammable?

20 Q. Yes.

21 A. I believe that was the
22 predecessor to Super-Strip. And then in '73,
23 you see where the next one -- I'm looking at
24 Document Number 17, August 13th, 1973. See
25 where it says, Strypeeze Super Strip?

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01 MARK MONIQUE

02 Q. Yes.

03 A. That's probably where they made
04 the change. They started transitioning the
05 name from Strypeeze nonflam to Super Strip
06 nonflam.

07 Q. Earlier you told me that
08 Savogran's best selling product was orange in
09 color. Was that Strypeeze?

10 A. Yes. The Strypeeze semi paste.

11 Q. Was the nonflammable version of
12 Strypeeze also orange in color?

13 A. I don't know.

14 Q. Was the Strypeeze Super Strip
15 in 1973 orange in color?

16 A. I don't know.

17 Q. Do you know when the
18 Super-Strip product began to have a blue
19 color to it?

20 A. I don't. Then it looks like in
21 '76, on the document marked 19, the Strypeeze
22 name is gone and then it's just Super Strip.

23 Q. Do you expect that the product
24 Super Strip would have taken on the blue
25 color when it dropped the Strypeeze name in

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01 MARK MONIQUE
02 order to distinguish it from Strypeeze?
03 A. No.
04 MS. BUSCH: Object to form.
05 THE WITNESS: I'm sorry, Andrew,
06 I don't know.
07 BY MR. DuPONT:
08 Q. What color was the label of the
09 Savogran Kutzit product?
10 MS. BUSCH: Object to form.
11 What period of time?
12 THE WITNESS: Do you want to --
13 do you want to go through the labels
14 with the dates? It might be easier.
15 BY MR. DuPONT:
16 Q. Let's -- let me see if you know
17 off the top of your head, and if not we'll go
18 through the labels.
19 A. Okay.
20 Q. Okay? So do you know what
21 colors were on the labels of this Savogran
22 Strypeeze -- strike that.
23 Do you know what colors were on
24 the labels of the Kutzit product in the
25 1950s, 1960s and 1970s?

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01 MARK MONIQUE

02 A. No. If you ask the question
03 again about the sixties and seventies, I can
04 say yes.

05 Q. All right. During the 1960s
06 and 1970s, what colors were the labels of the
07 Kutzit product?

08 A. Kutzit in the sixties was blue,
09 white and orange. And then the seventies,
10 red, white and blue.

11 Q. In the 1960's, what portion of
12 the label of the Kutzit product was blue?

13 A. Percentage-wise?

14 Q. What areas of the label, what
15 portion?

16 A. I'd -- I'd have to look at
17 them.

18 Q. All right.

19 A. You're throwing a lot of stuff
20 at me here.

21

- - -

22 (Whereupon the document was
23 marked, for identification purposes,
24 as Monique Exhibit Number 6.)

25

- - -

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01 MARK MONIQUE

02 THE WITNESS: Thanks.

03 BY MR. DuPONT:

04 Q. I'm handing you Exhibit 6,
05 which is Bates Number Lee-Savogran 71. Can
06 you tell me what Exhibit 6 is and what year
07 it relates to?

08 A. Okay. It's the -- it's the
09 Kutzit label from -- it's dated
10 November 19th, 1963. This would have been
11 the -- the printer's proof.

12 Q. And just describe what a
13 printer's proof is.

14 A. That -- this is -- it comes
15 from the plate that they used to print the
16 cans. The cans were lithographed.

17 Q. Okay.

18 A. Yep.

19 Q. And the bottom left-hand corner
20 of this printer's proof, we see the colors
21 blue and orange are handwritten there?

22 A. Yes.

23 Q. It's an indication that there
24 was blue and orange on the label?

25 A. Yes.

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01 MARK MONIQUE

02 Q. Now, looking at this printer's
03 proof of the November 19, 1963 version of the
04 Kutzit label, can you tell us what portions
05 of the label were blue?

06 A. I can't.

07 Q. Can you tell us what portions
08 of the label were orange?

09 A. I can't.

10 Q. Can you tell us what portion of
11 the label was white?

12 A. No.

13 Q. The next label I have is dated
14 February 14, 1969. We'll mark that as
15 Exhibit 10.

16 - - -

17 (Whereupon the document was
18 marked, for identification purposes,
19 as Monique Exhibit Number 7.)

20 - - -

21 BY MR. DuPONT:

22 Q. Looking at this version of the
23 label from February 14, 1969, can you tell us
24 again what portion of the label is white,
25 orange or blue?

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01 MARK MONIQUE

02 A. You can't tell.

03 Q. Do you know, based on the
04 company's color scheming, its marketing
05 methods, how it depicted its product name,
06 what colors were used in the product name as
07 opposed to the company name? Anything about
08 the way the company depicted its name?

09 A. Not from the sixties because,
10 you know, starting in the seventies it got a
11 little more uniform. We don't even use
12 orange. You know, they haven't used orange,
13 I don't think, since the sixties for color on
14 any of the packaging.

15 Q. So what changed in the 1970s?
16 Why did Kutzit begin to use a red, white and
17 blue color scheme?

18 A. I'm not sure.

19 Q. Can I have that exhibit back,
20 please?

21 A. Sure.

22 MR. DuPONT: Just for the
23 record, Counsel, we'll change this,
24 what I said was Exhibit 10 I'm going
25 to mark it as Exhibit 7, so we go in

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01 MARK MONIQUE
02 order.
03 - - -
04 THE WITNESS: Do you want me to
05 take it back?
06 - - -
07 (Whereupon the document was
08 marked, for identification purposes,
09 as Monique Exhibit Number 8.)
10 - - -
11 BY MR. DuPONT:
12 Q. So is Exhibit 8 the August 27,
13 1973 version of the Kutzit label?
14 A. Yes.
15 Q. And is this when the red, white
16 and blue color scheme was introduced?
17 A. Yes.
18 Q. And looking at -- at this
19 label, are you able to tell me what portion
20 of the Kutzit label was red, what portion was
21 white, what portion was blue?
22 A. Generally, yes.
23 Q. What -- what areas of the label
24 were blue?
25 A. The middle part, fast acting

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01 MARK MONIQUE

02 liquid for quick stripping, that would have
03 been blue. The right-hand side, which was
04 the back of the can, most likely was red. I
05 don't know whether Kutzit paint remover was
06 blue or red, I can't tell you that offhand.
07 The background would have been all white.

08 Q. I'm going to hand you a pen and
09 ask you if you could please bracket or
10 otherwise circle the areas that were blue on
11 the label, that you know.

12 A. That I positively can identify
13 as blue?

14 Q. Yes.

15 A. (Complying with request.)

16 Okay.

17 Q. And what portions of this 1973
18 version of the Kutzit label were red?

19 A. (Complying with request.)

20 MS. BUSCH: Andrew, how do you
21 want to distinguish that? He's
22 bracketing both?

23 THE WITNESS: Well, I'm just
24 putting blue and red. How's that? Is
25 that fine?

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01 MARK MONIQUE
02 BY MR. DuPONT:
03 Q. Yes.
04 A. (Complying with request.)
05 And that's generally.
06 Q. Okay. So you've put brackets
07 around the areas that are blue and written
08 the word blue next to those areas?
09 A. Yep. Uh-huh.
10 Q. And you put brackets around the
11 areas that were red and wrote the word red
12 next to those?
13 A. Yes.
14 Q. And then the name Kutzit paint
15 remover, that would have been either blue or
16 red, you're not sure?
17 A. It would have been either --
18 either/or, right.
19 Q. And the background of the label
20 would have been white?
21 A. Right. Correct.
22 Q. Who at the Savogran Company,
23 during the 1960s and 1970s was responsible
24 for preparing label language?
25 A. I'm not sure.

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01 MARK MONIQUE

02 Q. Do you know what types of
03 professionals, if any, Savogran Company
04 employed during the 1960s and 1970s?

05 A. I don't.

06 Q. Did the Savogran Company have
07 any employees in the 1960s and 1970s who had
08 education in industrial hygiene?

09 A. I don't know.

10 Q. Did the Savogran Company have
11 any employees in the 1960s and 1970s that had
12 education in toxicology?

13 A. Don't know.

14 Q. Did the Savogran Company have
15 any employees in the 1960s and 1970s that had
16 education in occupational health?

17 A. Don't know.

18 Q. Were there any safety
19 professionals employed by the Savogran
20 Company in the 1960s and 1970s?

21 A. Don't know.

22 Q. Do you have any knowledge that
23 the Savogran Company consulted with any
24 outside experts on the areas of safety,
25 industrial hygiene, toxicology or medicine

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01 MARK MONIQUE

02 during the 1960s and 1970s?

03 A. No knowledge.

04 Q. Do you have any evidence that
05 anyone at Savogran Company was qualified, by
06 education or experience, to prepare label
07 language when it comes to chemical safety,
08 warnings, things like that?

09 MS. BUSCH: Object to form.

10 THE WITNESS: No knowledge.

11 MR. DuPONT: Let's take a five
12 minute break.

13 VIDEO TECHNICIAN: Off the
14 record at 10:34.

15 - - -

16 (Whereupon there was a recess in
17 the proceeding.)

18 - - -

19 VIDEO TECHNICIAN: Back on the
20 record at 10:40. Beginning of disc
21 number two.

22 BY MR. DuPONT:

23 Q. So how did Savogran actually
24 manufacture the benzene-containing Kutzit
25 product during the 1960s and 1970s?

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01 MARK MONIQUE

02 MS. BUSCH: Object to form.

03 THE WITNESS: I can tell you

04 generally how we manufactured paint

05 removers, but I don't have any

06 knowledge of, you know, the sixties or

07 seventies. But I can, you know, bring

08 you through the process of how we make

09 a paint remover.

10 BY MR. DuPONT:

11 Q. Take me through that process,
12 please.

13 A. Okay. So we -- the -- the
14 larger volume ingredients are stored in
15 underground storage tanks. We have a -- a
16 mixing room with steam jacketed kettles where
17 we pump the -- the ingredients from the
18 underground storage tanks into the mixing
19 kettles. We -- the Ceresine wax that's in
20 the -- in the product gets melted. The
21 solvents get warmed up in the -- in the
22 jacketed kettles. And the wax, once it's
23 melted, gets mixed with the -- the solvents.
24 And then they get blended together.
25 It's a pretty simple process.

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01 MARK MONIQUE

02 In the Kutzit case, you know,
03 you only have the -- the ingredients are
04 pretty simple because all you have is the
05 primary solvents and the wax.

06 Once it's blended and mixed,
07 then it gets pumped over to a holding tank
08 where it sits while it's being filled into
09 the containers.

10 Q. And was that the same process
11 used to manufacture Kutzit when it contained
12 benzene at both the Norwood, Massachusetts
13 facility and the Addison, Illinois facility?

14 MS. BUSCH: Object to form.

15 THE WITNESS: I'm not -- I'm not
16 sure. Like I said, I don't have any,
17 you know, knowledge about the
18 manufacturing of Kutzit with the
19 benzene. But I can just tell you
20 generally how the paint removers are
21 made. Yep.

22 BY MR. DuPONT:

23 Q. Is it your understanding though
24 that the Kutzit with benzene in it as an
25 ingredient was manufactured both at

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01 MARK MONIQUE

02 Savogran's Norwood, Massachusetts facility,
03 as well as at its Illinois facility?

04 A. Yes.

05 Q. And earlier you told me that
06 the Norwood, Massachusetts facility sold to a
07 certain geographical area?

08 A. Uh-huh. I'm sorry, yes.

09 Q. What geographical area was
10 that?

11 A. That would have been the east
12 coast, all the way down through Florida.

13 Q. Was that true in the 1950s,
14 1960s and 1970s?

15 A. I believe it was.

16 Q. In the Illinois facility, which
17 was in Addison, Illinois at one point and
18 we've seen a reference to a Chicago, Illinois
19 facility, what geographic area did the
20 Illinois manufacturing facility sell product
21 to?

22 A. It would be Midwest, you know,
23 that would include as far east as Indiana.
24 Probably the central time zone of Tennessee,
25 all the way down to the panhandle of Florida.

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01 MARK MONIQUE
02 And then as far west as the eastern side of
03 the Rockies down through Texas.
04 Q. Where was the Savogran Kutzit
05 product manufactured that was sold west of
06 the Rockies?
07 A. Where was it manufactured?
08 Q. Yes.
09 A. I believe they manufactured it
10 out there.
11 Q. In Los Angeles?
12 A. Yes. Yeah.
13 Q. And that was true in the 1950s,
14 1960s and 1970s?
15 A. I believe it was, yes.
16 Q. If we look at some of the
17 labels going as far back to 1963, which is
18 Exhibit 6 there, we see the Savogran Addison,
19 Norwood and Los Angeles California addresses
20 on there?
21 A. Yes, uh-huh.
22 Q. Do you know what happened to
23 the labels of the Kutzit product that predate
24 1963?
25 A. I don't.

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01 MARK MONIQUE

02 Q. Is there anything that's
03 reminded you or helped you remember the name
04 of the company that was in Los Angeles that
05 for some period of time was an affiliate of
06 Savogran and involved with distributing
07 Kutzit?

08 A. No.

09 Q. Do you -- do you have any
10 reason to believe that in the 1950s, 1960s
11 and 1970s Kutzit didn't own the actual
12 manufacturing facility in Los Angeles,
13 California? Strike that.

14 Do you have any reason to
15 believe that Savogran didn't own the
16 manufacturing facility in Los Angeles,
17 California in the 1950s, 1960s and 1970s?

18 A. Yes.

19 Q. What is that?

20 A. We -- we did not own it.

21 Right.

22 Q. What's your basis for saying
23 that? What have you seen? Who have you
24 talked to that tells you that Savogran didn't
25 own a facility in Los Angeles, California in

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01 MARK MONIQUE
02 the fifties, sixties and seventies?
03 A. We had some -- some records
04 that there was -- about the stock purchase.
05 Q. And you don't remember the name
06 of the company that was bought?
07 A. I'm sorry, I don't.
08 Q. On these labels though,
09 Savogran is holding out the Los Angeles,
10 California facility as one of its own
11 facilities; right?
12 A. I don't -- that's -- I don't
13 know. I mean, that's kind of a broad
14 generalization that, you know -- I agree
15 that, you know, they got the name on there,
16 but I don't know what the -- you know, what
17 the purpose was or anything.
18 Q. Savogran does list in 1963
19 Los Angeles, California as an address
20 underneath its name. Fair?
21 A. Yes. Yeah.
22 Q. And there's nothing on this
23 label that would tell a purchaser of the
24 product that there was any other company
25 associated with the Los Angeles, California

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01 MARK MONIQUE

02 address, is there?

03 A. Correct.

04 Q. So a consumer reading this
05 label, looking at the Savogran name and the
06 Los Angeles, California address under it, it
07 would be reasonable for them to expect that
08 that location was a Savogran location?

09 MS. BUSCH: Object to form.

10 THE WITNESS: Yes. I mean, I
11 would say -- maybe they wanted to have
12 the appearance that they were bigger
13 than they really were. I don't know.
14 You know.

15 BY MR. DuPONT:

16 Q. Now, have you undertaken an
17 investigation to determine who the suppliers
18 of benzene were to Savogran in and before
19 1973?

20 A. Yes.

21 Q. What have you done to
22 investigate that?

23 A. Turned that place upside and
24 down to try to find any records to that
25 effect.

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01 MARK MONIQUE

02 Q. What did you learn?

03 A. I learned nothing. Absolutely
04 nothing.

05 - - -

06 (Whereupon the document was
07 marked, for identification purposes,
08 as Monique Exhibit Number 9.)

09 - - -

10 BY MR. DuPONT:

11 Q. We were provided with a
12 document that I've marked as Exhibit 9, Bates
13 Number Lee-Savogran 86 to 87. And this
14 appears to be a November, 1975 AMSCO
15 Division, Union Oil Company of California
16 MSDS for toluene; is that right?

17 A. Yes.

18 Q. Have you seen this document
19 before?

20 A. Yes.

21 Q. Did you find this document?

22 A. Yes.

23 Q. Where did you find it?

24 A. I found it in the toluene file.

25 Q. So tell me about that, how --

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01 MARK MONIQUE

02 how are files organized, like the toluene
03 file? Are there files that Savogran has for
04 particular ingredients?

05 A. Yes. Yeah.

06 Q. Is -- is there a benzene file?

07 A. Unfortunately not.

08 Q. Do you know what happened to
09 the benzene file?

10 A. I don't think there ever was
11 one. The file cabinet that this came out of
12 is in the laboratory, which was -- the
13 laboratory is, I guess, in the history of
14 Savogran is fairly recent, within the last
15 25 years. It was actually set up by John
16 Gale. And, of course, at that point they
17 weren't using benzene as an ingredient. So,
18 hence, there's no file for benzene.

19 Q. When did John Gale set up the
20 laboratory? You said about 25 years ago?

21 MS. BUSCH: Objection, form.

22 THE WITNESS: 25, 30 years ago.

23 BY MR. DuPONT:

24 Q. So that takes us back to about
25 what, 1985, 1990?

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01 MARK MONIQUE
02 A. Yeah, something like that.
03 Yeah.
04 Q. And this document, Exhibit 10,
05 is dated from 1975?
06 A. Right.
07 Q. Do -- do you know what John
08 Gale did with respect to documents that were
09 dated earlier than when he set up the
10 laboratory?
11 A. I'm sorry, I don't.
12 Q. What was the oldest date of a
13 document you found in the toluene file?
14 A. I don't recall.
15 Q. Were there any documents that
16 were older than 1975 in the toluene file?
17 A. I'm sorry, Andrew, I don't
18 remember.
19 Q. How -- how big is the toluene
20 file? What does it look like?
21 A. It's about like that
22 (indicating).
23 Q. About an inch thick?
24 A. Yeah. Yeah. This -- you know,
25 this -- this and the -- I think there was an

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01 MARK MONIQUE

02 Exxon one in there. There just happened to
03 be some random ones that, for whatever
04 reason, just survived in the file.

05 Q. All right. The fact that
06 Savogran had an AMSCO division in Unocal
07 toluene MSDS from 1975, would that be an
08 indication to you that AMSCO was a supplier
09 of toluene to Savogran in 1975?

10 MR. McDERMOTT: Objection to
11 form.

12 THE WITNESS: Yeah. I couldn't
13 say with any certainty. You know, it
14 could have come in with a sample. It
15 could be from, you know, a purchase.
16 I couldn't tell you with any -- with a
17 hundred percent certainty.

18 BY MR. DuPONT:

19 Q. Have you spoken with Tom Little
20 in order to learn who suppliers of benzene
21 were to Savogran?

22 A. Yes. Yes. I -- his
23 recollection is, when he started in '72, that
24 they weren't even using benzene then. And --
25 but you got to remember when he started in

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02 '72, he was just general factory help. So,
03 you know, he might not even -- he might not
04 even have, you know, worked in that
05 department, or been close to it or whatnot.
06 Yes.

07 Q. So you didn't think Tom Little
08 would have had actual knowledge of what
09 chemicals were going into Kutzit?

10 A. I know for certain he doesn't,
11 because I asked him.

12 Q. Okay.

13 A. Yeah.

14 Q. Now, is there anybody who's
15 still alive who was working for Savogran in
16 the 1960s and 1970s, besides Mr. Little?

17 A. They -- they're all gone.
18 There's been so much time that has passed,
19 Andrew.

20 Q. I think I've seen reference to
21 a Mr. Robert Link?

22 A. Yes.

23 Q. Who was Robert Link?

24 A. He was -- he was the president
25 two -- there was a -- two presidents ago.

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01 MARK MONIQUE

02 And he was the treasurer for the company for
03 a number of years.

04 Q. During what years was Mr. Link
05 employed by Savogran?

06 A. I'm not sure. It was -- it was
07 a lengthy period.

08 Q. Is Mr. Link still alive?

09 A. No, he's gone.

10 Q. When did he pass away?

11 A. Two years ago.

12 Q. Have you ever spoken with Mr.
13 Link in order to learn who suppliers of
14 benzene were to Savogran?

15 A. No.

16 Q. Have you ever spoken with Mr.
17 Link to learn more about the company's
18 history as it relates to the manufacture and
19 sale of Kutzit with benzene in it?

20 A. No. He left the company a long
21 time ago and he was really in failing health
22 for a number of years.

23 Q. Did Savogran do anything to
24 research the health hazards of benzene when
25 it make Kutzit with benzene in it?

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01 MARK MONIQUE

02 A. I have not found any records to
03 -- to show that, you know.

04 Q. You would agree with me that
05 Savogran had an obligation to its customers
06 to educate itself about the health hazards of
07 the ingredients of its products, including
08 benzene?

09 MS. BUSCH: Object to form.

10 THE WITNESS: Yes.

11 BY MR. DuPONT:

12 Q. And Savogran had a duty and
13 obligation to its customers to warn them
14 about all the health hazards of the
15 ingredients of its products like benzene?

16 MS. BUSCH: Object to form.

17 THE WITNESS: Yes.

18 BY MR. DuPONT:

19 Q. Because customers and users of
20 Kutzit had a right to know what was in the
21 product they were using and what the health
22 hazards of that product were?

23 MS. BUSCH: Object to form.

24 THE WITNESS: Yes.

25 BY MR. DuPONT:

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01 MARK MONIQUE

02 Q. Now, in the 1950s, 1960s,
03 1970s, it was -- it was reasonable for a
04 company like Savogran to reach out to
05 government agencies to learn about the health
06 hazards of the chemicals that they used?

07 MS. BUSCH: Object to form.

08 THE WITNESS: I'm not sure about
09 that one.

10 BY MR. DuPONT:

11 Q. Well, you recognize that a
12 company that manufactured chemical products
13 in the 1950s, '60s and '70s, they could
14 contact government agencies to learn about
15 the health hazards of chemicals?

16 MS. BUSCH: Object to form.

17 THE WITNESS: Definitely in this
18 day and age, but I'm not -- I'm not so
19 sure about in those days.

20 BY MR. DuPONT:

21 Q. Let's talk about the 1970s. Do
22 you have any reason to believe that Savogran
23 couldn't have contacted government entities,
24 like the Department of Labor or state
25 government agencies to learn about the health

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01 MARK MONIQUE
02 hazards of chemicals?
03 MS. BUSCH: Object to form.
04 THE WITNESS: I don't know.
05 BY MR. DuPONT:
06 Q. When you began with the company
07 in 1987, were you aware that you could
08 contact a government agency to learn about
09 the health hazards of chemicals?
10 A. Yes.
11 Q. And Savogran, in the 1950s,
12 1960s and 1970s, had an obligation to be
13 knowledgeable about the laws that governed
14 the use of chemicals in its products.
15 MS. BUSCH: Object to form.
16 BY MR. DuPONT:
17 Q. Is that fair?
18 A. Yes.
19 Q. Some of those laws were at the
20 federal level applied across the country and
21 some of those laws were issued by the states
22 that Savogran did business in?
23 MS. BUSCH: Object to form.
24 THE WITNESS: Yes.
25 BY MR. DuPONT:

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02 Q. Do you have any evidence that
03 Savogran reached out to a government agency
04 in the 1950s, 1960s or 1970s to learn what
05 those agencies knew about the health hazards
06 of benzene?

07 MS. BUSCH: Object to form.

08 THE WITNESS: No information on
09 that.

10 BY MR. DuPONT:

11 Q. Do you have any evidence that
12 Savogran looked at or researched the laws
13 that applied to the use of benzene during the
14 1950s, '60s and '70s?

15 MS. BUSCH: Object to form.

16 THE WITNESS: No.

17 BY MR. DuPONT:

18 Q. Do you think it would be
19 irresponsible for a company not to educate
20 itself about the laws that governed how it
21 used chemical products?

22 MS. BUSCH: Object to form.

23 THE WITNESS: Yes.

24 MR. DuPONT: Let's go off the
25 record.

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02 VIDEO TECHNICIAN: Off the
03 record at 10:57.
04 - - -
05 (Discussion held off the
06 record.)
07 - - -
08 VIDEO TECHNICIAN: Back on the
09 record at 11:00 a.m.
10 BY MR. DuPONT:
11 Q. The Kutzit product was -- was
12 obviously a paint remover; right?
13 A. Yes.
14 Q. And it worked to remove various
15 types of coatings like varnishes, shellacs,
16 lacquers. Is that right?
17 A. Yes.
18 Q. It was intended for use on a
19 variety of types of services, including
20 furniture?
21 A. Yes.
22 Q. Things like chairs and tables
23 and dressers, all types of furniture?
24 A. Kutzit is -- because it's a
25 liquid, doesn't have a lot of viscosity and,

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02 consequently, doesn't cling very well. It's
03 more suited for flat, horizontal surfaces.

04 Q. Right.

05 A. And it works, you know -- it
06 was always designed more for stripping clear
07 finishes versus heavily painted objects.

08 Q. But the Kutzit product
09 certainly could be used for stripping heavily
10 painted projects; right?

11 A. Yes.

12 Q. And I seen reference in
13 advertisements for Kutzit that one of the
14 ways Kutzit could be used would be applying
15 it onto a piece of furniture and other
16 surface with a brush?

17 A. Yes.

18 Q. Another way Kutzit was marketed
19 to be used was in more of a dipping
20 operation, where you can have a volume of
21 Kutzit and then dip a piece of furniture into
22 it?

23 A. Not Kutzit, no.

24 Q. You haven't seen that reference
25 in the marketing materials?

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02 A. No.

03 Q. Now, a -- a person could take
04 Kutzit, pour it into a container and then
05 submerge a piece of furniture or another
06 object that wasn't a flat horizontal
07 substance, and use it to remove the paint or
08 coating from that surface?

09 A. They could, certainly.

10 Q. Is there any reason that they
11 shouldn't do that?

12 A. Well, it's very flammable. We
13 have a nonflammable line of paint removers
14 that we market for dip tank stripping.

15 Q. Is there anything about the
16 health consequences of putting Kutzit into a
17 container, particularly when it contained
18 benzene, and submerging furniture into it?

19 MS. BUSCH: Objection.

20 THE WITNESS: Well, there's more
21 of an acute hazard than a chronic
22 hazard. It's because of the
23 flammability.

24 BY MR. DuPONT:

25 Q. And when you say acute hazard,

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02 did that include the acute hazard from
03 exposure to benzene?

04 A. That would be a chronic hazard.

05 Q. Putting Kutzit into a -- some
06 type of pan or container and then submerging
07 a product to it, would that result in a
08 greater level of exposure to benzene?

09 MS. BUSCH: I'm going to object.

10 He's not an expert on these areas. I
11 don't think he's qualified to render
12 testimony about it. If you know, you
13 can answer.

14 THE WITNESS: I don't know.

15 - - -

16 (Whereupon the document was
17 marked, for identification purposes,
18 as Monique Exhibit Number 11.)

19 - - -

20 BY MR. DuPONT:

21 Q. I'm handing you Exhibit 11.

22 A. Uh-huh.

23 Q. Is Exhibit 11 an advertisement
24 for Kutzit?

25 A. I -- yes.

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01 MARK MONIQUE

02 Q. And it refers to Kutzit as
03 continuing to be the leading benzol paint
04 remover in the south?

05 A. Yes. Yes.

06 Q. Its enjoyed wide customer
07 acceptance, fast turnover and full profits.
08 Is that what the advertisement says?

09 A. Yes.

10 Q. And Kutzit was referred by
11 do-it-yourselfers and preferred in the south?

12 A. "Ideal for stripping old
13 finishes on flat or horizontal surfaces in a
14 well ventilated or open area." That part?

15 Q. The advertisement states that
16 Kutzit was preferred by do-it-yourselfers and
17 preferred in the South; is that correct?

18 A. Oh, yes, I'm sorry. I see
19 that. "Kutzit continues to be leading
20 benzol paint remover in the South."

21 Q. And it says, "Kutzit is tops in
22 the South."

23 A. Here's the top selling paint
24 remover in your market area, yes.

25 Q. And specifically it points out

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02 the South as being an area where Kutzit is
03 the top selling product?

04 A. Yes.

05 Q. Now, in this advertisement
06 Savogran is telling its customers that Kutzit
07 is manufactured and produced under rigid
08 quality control. Is that right?

09 A. Yes. Yep.

10 Q. Do you have any evidence that
11 there was any rigid quality control with
12 respect to the health hazards of the
13 chemicals that were used in a Kutzit product
14 containing benzene?

15 MS. BUSCH: Object to form.

16 THE WITNESS: No.

17 BY MR. DuPONT:

18 Q. Should a company tell its
19 customers that its products are manufactured
20 under rigid quality control if those products
21 contain hazardous chemicals?

22 MS. BUSCH: Object to form.

23 THE WITNESS: Yes.

24 BY MR. DuPONT:

25 Q. When a customer looks at an

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02 advertisement and sees that there's rigid
03 quality control, are you saying that they
04 expect that that product is going to be
05 hazardous to their health?
06 MS. BUSCH: Object to form.
07 THE WITNESS: I don't see where
08 you can tie the two things together.
09 BY MR. DuPONT:
10 Q. Do you expect quality products
11 to be hazardous to your health?
12 MS. BUSCH: Object to form.
13 THE WITNESS: They could be.
14 BY MR. DuPONT:
15 Q. Don't you have a concern that a
16 customer reading an advertisement for Kutzit,
17 seeing that it's manufactured or produced
18 with rigid quality control is going to be led
19 to believe that that's a safe product?
20 MS. BUSCH: Object to form.
21 THE WITNESS: Yes.
22 BY MR. DuPONT:
23 Q. And, in fact, if the product
24 contained a known human carcinogen, but
25 they're led to believe that it's a safe

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02 product, that would be misleading, wouldn't
03 it?

04 MS. BUSCH: Object to form.

05 THE WITNESS: No.

06 BY MR. DuPONT:

07 Q. You don't think it's misleading
08 to tell a customer that a product is safe,
09 when, in fact, it contains a known human
10 carcinogen?

11 MS. BUSCH: Object to form.

12 Misstates what's characterized in
13 Exhibit 11.

14 THE WITNESS: Was it a known
15 human carcinogen in 1960?

16 BY MR. DuPONT:

17 Q. All right. Well, if benzene
18 was a suspected human carcinogen, and there
19 are reports of benzene causing all forms of
20 chronic and acute leukemia, would it be
21 misleading to tell and infer to a customer
22 that the product was safe?

23 MS. BUSCH: Same objections.

24 THE WITNESS: No.

25 BY MR. DuPONT:

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02 Q. You wouldn't want a customer to
03 be aware that benzene was suspected to cause
04 all forms of acute and chronic leukemia?

05 MS. BUSCH: Object to form.

06 THE WITNESS: And that's true
07 for the 1960s?

08 BY MR. DuPONT:

09 Q. If it was true in the 1960s and
10 1970s --

11 A. Yeah.

12 Q. -- would you want the customer
13 to be aware of that?

14 A. Yes, definitely.

15 Q. And if it was true in the 19 --
16 say 1964 that benzene had been reported to
17 cause all forms of acute and chronic
18 leukemia, wouldn't you have a concern in
19 telling your customers and informing them
20 that the product was safe if, in fact, that
21 was reported for benzene?

22 MS. BUSCH: Object to form,
23 mischaracterizes what's contained in
24 Exhibit 11.

25 THE WITNESS: Yes.

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01 MARK MONIQUE

02 BY MR. DuPONT:

03 Q. And, in fact, the customer
04 would be misled to believe that the Kutzit
05 product was safe, when, in fact, there were
06 reports of benzene causing all forms of
07 acute --

08 MS. BUSCH: Object --

09 BY MR. DuPONT:

10 Q. -- and chronic leukemia; right?

11 A. Yes.

12 Q. And that's not a responsible
13 thing to do, is it, tell a customer that a
14 product is safe --

15 MS. BUSCH: Object to form.

16 BY MR. DuPONT:

17 Q. -- when there are reports of
18 benzene causing all forms of chronic and
19 acute leukemia?

20 MS. BUSCH: Object to form.

21 Argumentative, misstates facts.

22 THE WITNESS: Yes.

23 BY MR. DuPONT:

24 Q. You have not seen a label for a
25 Kutzit product during the 1950s, 19 -- strike

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02 that.

03 Q. You have not seen a label for a
04 Kutzit product during the 1960s and 1970s
05 that contained a cancer warning. Is that
06 true?

07 A. Yes.

08 Q. And you have not seen a label
09 for a Kutzit product during the 1960s or
10 1970s that advised the user to wear a
11 respirator when working with the product. Is
12 that true?

13 A. Correct.

14 Q. And you've not seen a label for
15 a Kutzit product during the 1960s and 1970s
16 that advised the user that they would be at
17 risk for a fatal blood or bone marrow disease
18 from exposure to benzene. Is that true?

19 A. True.

20 Q. Would you take out Exhibit 6,
21 please?

22 A. (Complying with request.)

23 Got it.

24 Q. Thank you. We're looking at
25 the label of the Kutzit product from

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02 November 19, 1963, when the product contained
03 benzene; right?

04 A. Yes.

05 Q. And on the right-hand side of
06 the label there's the word Kutzit and then
07 there are some instructions under the word
08 Kutzit in bullet points?

09 A. Yes.

10 Q. And would this portion of the
11 label have been on the side of the container,
12 the back of the container?

13 A. This would have been the back.

14 Q. And on the back of the
15 container, one of the instructions for how
16 Kutzit is to be used is to, quote, Be sure to
17 apply the thickest possible coat of remover
18 by flowing it on with a loaded brush in one
19 direction only, close quote.

20 A. Yes.

21 Q. So that's telling the customer
22 of Kutzit to use a lot of the product in
23 order to perform the paint removing?

24 MS. BUSCH: Object to form.

25 THE WITNESS: It's telling them

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02 to lay it on like you're icing a cake
03 because if you brush back and forth
04 too much, the wax that's in there
05 doesn't have a chance to form a
06 barrier. And that's what keeps the
07 solvents down on the surface. So if
08 you just lay it on like you're icing a
09 cake, the wax forms that barrier,
10 keeps the solvents on the surface and
11 allows them to attack the paint film.
12 If you're brushing around too much, it
13 all flashes off.

14 BY MR. DuPONT:

15 Q. And what Savogran is telling
16 the customer is to use as thick as possible
17 coat of Kutzit to do -- to do this work?

18 A. Yes.

19 Q. And that they want to load that
20 brush up with the Kutzit product?

21 MS. BUSCH: Object to form.

22 THE WITNESS: Yes.

23 BY MR. DuPONT:

24 Q. Would you turn to Exhibit 7,
25 please?

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02 A. (Complying with request.)

03 Okay. Go it.

04 Q. Under -- in the same area of
05 the label, which would have been on the back
06 portion of the label, and we're now looking
07 at the February 14, 1969 label for Kutzit;
08 right?

09 A. Yes.

10 Q. In this label it contains a
11 reference to gloves and it tells the user
12 that in order to protect sensitive skin to
13 wear a cotton lined type heavy rubber gloves.
14 Do you see that?

15 A. Yes.

16 Q. Do you know why Kutzit or
17 Savogran is telling the user only wear gloves
18 when you have sensitive skin?

19 A. I have no idea.

20 Q. Were you aware that benzene is
21 absorbed through the human skin?

22 MS. BUSCH: Object to form.

23 THE WITNESS: No.

24 BY MR. DuPONT:

25 Q. Were you aware that benzene

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01 MARK MONIQUE
02 causes cancer and bone marrow toxicity when
03 it's absorbed through the human skin?
04 MS. BUSCH: Object to form.
05 THE WITNESS: No.
06 BY MR. DuPONT:
07 Q. Do you have any evidence that
08 Savogran Company attempted to educate itself
09 about how benzene exposure happened when
10 using a product like Kutzit?
11 A. No.
12 - - -
13 (Whereupon the document was
14 marked, for identification purposes,
15 as Monique Exhibit Number 12.)
16 - - -
17 BY MR. DuPONT:
18 Q. I'll hand you Exhibit 12. What
19 is Exhibit 12, please?
20 A. That's a product data sheet.
21 Q. For Kutzit?
22 A. Yes. Sorry.
23 Q. And this was generated by
24 Savogran?
25 A. Yes.

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02 Q. What date does this relate to?

03 A. That -- that's probably around
04 2000.

05 Q. And what makes you say that?

06 A. The label.

07 Q. Here Kutzit is saying that,
08 under the application section on the second
09 page, it's saying that one gallon of remover
10 covers approximately -- strike that.

11 I keep saying Kutzit.

12 Here, Savogran is telling the
13 user, under the application section, that one
14 gallon of remover covers approximately a
15 hundred square feet of surface area. Do you
16 see that?

17 A. Yes.

18 Q. Now, at this point in time, was
19 the Kutzit being made with the methylene
20 chloride?

21 A. Yes.

22 Q. And we understand now that
23 methylene chloride was a much better paint
24 remover than benzene?

25 A. Much better paint remover

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02 ingredient than benzene, yep.

03 Q. All right. So would you expect
04 that it would take more volume of the
05 benzene-containing version of Kutzit to cover
06 an area of a hundred square feet than it
07 would the methylene chloride version of
08 Kutzit?

09 MS. BUSCH: Object to form.

10 THE WITNESS: I'm not sure
11 because you got to remember, these are
12 formulated products. So each
13 component in that formula is, you
14 know, it's a synergistic effect.
15 They're all working together to strip
16 the finish.

17 BY MR. DuPONT:

18 Q. Were there other components of
19 the Kutzit that actively stripped finishes
20 besides benzene or methylene chloride?

21 A. Yes. Take lacquer and shellac
22 for instance. The acetone and the methanol
23 is a much better solvent for those types of
24 finishes than even methylene chloride.

25 Q. Now, by the way, would -- would

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02 Kutzit take the paint off of a -- strike
03 that.

04 Would the benzene-containing
05 version of Kutzit take paint off of an
06 automotive finish?

07 A. Probably not.

08 Q. What is it? Is there something
09 about benzene that wouldn't take paint off an
10 automotive finish?

11 A. Well, automotive finishes
12 inherently, you know, have a certain amount
13 of chemical resistance built into them. So,
14 you know, they're very difficult finishes to
15 strip.

16 Q. So you don't think a product
17 with benzene in it would take the paint off
18 of a car?

19 A. Not very well, no.

20 Q. And that's based on your --

21 A. Just knowledge, yes.

22 Q. Multiple decades of experience
23 working as a chemist for a company that
24 specialized in manufacturing paint removers?

25 MS. BUSCH: Object to form.

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02 THE WITNESS: Correct.
03 BY MR. DuPONT:
04 Q. Once Savogran took the benzene
05 out of the Kutzit product after 1973, did it
06 begin to manufacture Kutzit as the -- as not
07 containing benzol or benzene?
08 A. The literature?
09 Q. Yes.
10 A. Yes.
11 Q. And for how long a period of
12 time after 1973 did Savogran continue to say,
13 hey, now Kutzit doesn't contain benzene?
14 A. I'm not sure.
15 - - -
16 (Whereupon the document was
17 marked, for identification purposes,
18 as Monique Exhibit Number 13.)
19 - - -
20 BY MR. DuPONT:
21 Q. I'm handing you Exhibit 13.
22 A. Okay.
23 Q. Exhibit 13 is a piece of
24 marketing material for Kutzit?
25 A. Yes.

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02 Q. And is there anything on this
03 exhibit that tells you the date that this
04 material relates to?

05 A. 1985, on the second page.
06 Lower right-hand corner.

07 Q. All right. And so in 1985, on
08 the first page of this -- this marketing
09 brochure, Savogran is saying that the Kutzit
10 does not contain benzol and it uses benzene
11 under the word benzol?

12 A. Yes.

13 Q. So here Savogran is using
14 benzene and benzol as the same thing?

15 A. Yes.

16 - - -

17 (Whereupon the document was
18 marked, for identification purposes,
19 as Monique Exhibit Number 14.)

20 - - -

21 BY MR. DuPONT:

22 Q. Exhibit 14. Are you able to
23 tell me what the date of Exhibit 14 is?

24 A. It's not marked.

25 Q. Exhibit 14 is an advertising

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01 MARK MONIQUE
02 material for Savogran's Kutzit product?
03 A. Yes.
04 Q. On the first page of Exhibit 14
05 there are some photographs of containers of
06 Kutzit. Do you see that?
07 A. Yes.
08 Q. Does anything about the
09 appearance of the containers or the labels
10 help you with the date that this relates to?
11 A. The best way to figure it out
12 would be with the label on the back. Match
13 that up to the labels that -- that we gave
14 you.
15 Q. Okay.
16 A. Yeah.
17 Q. Looking at the front page of
18 this piece of marketing material for the
19 Kutzit product --
20 A. Uh-huh.
21 Q. -- does it indicate that one of
22 the uses of Kutzit is for use in a dip tank?
23 A. Yes.
24 Q. When a product or a piece of
25 furniture can be totally submerged?

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02 A. Yes.

03 Q. So one of the ways Kutzit can
04 be used when you had a piece of furniture
05 that wasn't a flat horizontal surface was,
06 you could dip it into a tank or some other
07 container that contained Kutzit; right?

08 A. Yes, according to this. Yeah.

09 Q. And that was actually one of
10 the intended uses that Savogran advertised
11 for the product?

12 A. Yes.

13 - - -

14 (Whereupon the document was
15 marked, for identification purposes,
16 as Monique Exhibit Number 15.)

17 - - -

18 BY MR. DuPONT:

19 Q. I'll hand to you Exhibit 15.
20 Is Exhibit 15 a Savogran brochure?

21 A. Yes.

22 Q. Brochure or catalogue?

23 A. Uh-huh. Yes.

24 Q. Some marketing material?

25 A. Yes.

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02 Q. And looking at this catalogue,
03 take your time, is there a date on here that
04 tells us what year or years this corresponded
05 to?

06 A. Last page. Was it possibly
07 1988?

08 Q. So at the bottom right-hand
09 corner, last page of the exhibit, there's a
10 code, CO-3-88-7.5M?

11 A. Yes.

12 Q. And, reading this, this would
13 indicate to you that this catalogue was used
14 in 1988?

15 A. Possible. Yeah, possibly.

16 Q. And if you would turn to the
17 second page of the exhibit, please, Bates
18 Number Lee-Savogran 51.

19 A. Yep.

20 Q. On the left-hand side of the
21 page there's a discussion of a customer
22 getting more from Savogran, the makers of
23 world famous Strypeeze. Do you see that?

24 A. Yes.

25 Q. And there's a discussion of

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02 some of the other products that Savogran
03 manufactured and sold, one of which is
04 Kutzit. Do you see that paragraph?

05 A. Yes.

06 Q. And Savogran says that, "Its
07 brand name, including Kutzit, have earned its
08 consumers' trust and loyalty for their
09 effectiveness."

10 A. Yes.

11 Q. Would you turn to the next
12 page?

13 A. (Complying with request.)

14 Q. There's a description of how
15 the Kutzit product is to be used. And,
16 consistent with what we've discussed before,
17 it indicates that it softens oil-based
18 paints, lacquers, synthetic-based finishes
19 and varnishes from flat or horizontal
20 surfaces, such as tops of tables, desks and
21 bureaus, chair, bench seats, et cetera?

22 A. Yes.

23 Q. And then it refers to using
24 Kutzit ideally -- can ideally be used in a
25 dip tank where a piece can be totally or even

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02 partially submerged?
03 A. Yes.
04 Q. And under that description
05 there's a list of container types. There's a
06 one pint, a one quart, one gallon, five
07 gallon and 55 gallon drum of Kutzit?
08 A. Yes.
09 Q. And looking at the jobbers'
10 price lists that go back to 1949 from Kutzit,
11 we see that those container sizes, one pint,
12 one quart, one gallon, five gallon and 55
13 gallon drums were consistent container sizes
14 for Kutzit from 1949 up until the late 1980s?
15 A. Yes.
16 Q. And, in fact, there's even some
17 half pint containers that were used in the
18 1940s and 1950s for Kutzit?
19 Take out Exhibit 2, please.
20 A. You're going to make me look
21 now.
22 Q. Excuse me, Exhibit 1.
23 A. Yes.
24 Q. So in Exhibit 1, there's a
25 price list from 1949, a price list from 1950

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01 MARK MONIQUE

02 and a price list from 1962 -- excuse me,
03 strike that.

04 In Exhibit 1 there's a price
05 list from 1949, 1950 that refer to the use of
06 Kutzit in half pint containers?

07 A. Yes.

08 Q. And the Kutzit in gallon
09 containers, was it always sold in a -- in a
10 metal kind of rectangular container with
11 rounded edges?

12 A. Yes.

13 Q. With a screw top?

14 A. Yes.

15 Q. Has Savogran Company been a
16 member of industry organizations?

17 A. Yes.

18 Q. Which ones?

19 A. We -- we currently belong to
20 the Associated Industries of Massachusetts.
21 We belong to a small state organization
22 called the Massachusetts Chemistry and
23 Technology Alliance. We belong to the
24 Halogenated Solvents -- Solvents Industry
25 Alliance. And many years ago we belonged to

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02 the National Paint and Coatings Association.
03 Q. And what's the purpose of
04 Savogran joining organizations like these?
05 A. Networking.
06 Q. Exchanging -- exchanges of
07 information?
08 A. Information, right. Yes.
09 Q. Learn things from other
10 manufacturers of -- of coating products?
11 A. Right.
12 Q. That's one of the ways that
13 industry members got together and exchanged
14 information about their products, what they
15 knew about their products?
16 A. Yes.
17 Q. When was Savogran a member of
18 the National Painting and Coatings
19 Association?
20 A. I think we dropped out 10,
21 15 years ago.
22 Q. And I've seen some reference in
23 the documents to the National Painting --
24 National Paint and Coatings Association and
25 Savogran corresponding with the members of

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01 MARK MONIQUE

02 that association in the 1970s. Are you
03 familiar with that?

04 A. You'd have to show them to me.

05 - - -

06 (Whereupon the document was
07 marked, for identification purposes,
08 as Monique Exhibit Number 16.)

09 - - -

10 BY MR. DuPONT:

11 Q. I'll hand to you Exhibit 16.

12 A. Thank you.

13 Q. Is Exhibit 16 a June 16, 1977
14 letter from Carl O. Olson of the Savogran
15 Company?

16 A. Yes.

17 Q. And Mr. Olson was the president
18 of Savogran at the time?

19 A. Yes.

20 Q. During what years was he the
21 president of Savogran?

22 A. I don't know.

23 Q. Mr. Olson writes this letter to
24 an individual with the Consumer Product
25 Safety Commission, and then he copies the

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01 MARK MONIQUE
02 letter to several other folks. Do you see
03 that?
04 A. Yes.
05 Q. The first person that's copied
06 on the letter is R. David Pittle. Do you
07 know who that was?
08 A. I don't.
09 Q. It says, R. David Pittle, Vice
10 Chairman. Does that help you?
11 A. No.
12 Q. The next person that's copied
13 is Barbara Franklin. Do you know who that
14 was?
15 A. I don't.
16 Q. The next person is Lawrence
17 Kushner. Who was that?
18 A. No idea.
19 Q. Who is T. Hadden Garrett?
20 A. No idea.
21 Q. Then the last person copied is
22 a Ms. Stella Miller with the National -- it's
23 an abbreviation, but it looks to be the
24 National Paint and Coatings Association?
25 A. Yes.

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01 MARK MONIQUE

02 Q. So would this be an indication
03 to you that the Savogran Company was, more
04 likely than not, a member of the National
05 Paint and Coatings Association in 1977?

06 A. Yes.

07 Q. And it refers to some things
08 happening before 1977. So would you expect
09 that it was for a number of years before 1977
10 that Savogran was a member of the National
11 Paint and Coatings Association?

12 MS. BUSCH: Object to form.

13 THE WITNESS: Yes.

14 BY MR. DuPONT:

15 Q. Was Savogran a member of the
16 National Paint and Coatings Association in
17 the 1960s?

18 A. I'm not sure.

19 Q. But we know at least in the
20 1970s it was a member?

21 A. Yes.

22 Q. Do you know who the other
23 members of the National Paint and Coatings
24 Association were?

25 A. No.

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01 MARK MONIQUE

02 Q. Were they big paint companies,
03 like DuPont?

04 A. I'm not sure.

05 - - -

06 (Whereupon the document was
07 marked, for identification purposes,
08 as Monique Exhibit Number 17.)

09 - - -

10 BY MR. DuPONT:

11 Q. I'm going to hand to you
12 Exhibit Number 17, and I'll represent to you
13 that Exhibit 17 is a November 30, 1954 letter
14 from John H. Foulger, M.D., the Director of
15 Medical Research at DuPont. And he's writing
16 to a Mr. Dewey Mark from Organic Chemicals
17 Division of Cosden Petroleum Corporation. Do
18 you see that?

19 A. Yes. Uh-huh.

20 Q. And in this letter there's a
21 discussion of the use of benzene in the
22 manufacture of paints, lacquers, enamels and
23 thinners. Do you see that?

24 A. Yes.

25 Q. And Dr. Foulger writes that, in

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01 MARK MONIQUE

02 the second paragraph, "In the DuPont Company,
03 however, we consider benzene to be so
04 hazardous that we try to avoid its use as far
05 as possible." Do you see that Dr. Foulger
06 writes that?

07 A. Yes.

08 Q. And in 1954 DuPont's Dr.
09 Foulger writes, "I personally recommend that
10 it be eliminated from all paint removers or
11 paints, lacquers, enamels and thinners
12 because, in my opinion, it should only be
13 used under circumstances in which there's
14 very thorough ventilation to prevent workers
15 from inhaling benzol and constant medical
16 supervision of these workers to make certain
17 they do not develop anemia." Do you see
18 that?

19 A. Yes.

20 Q. Do you see that Dr. Foulger
21 writes that "Benzol is a very insidious
22 poison, and once bone marrow damage has been
23 produced by it, the clinical condition is
24 almost impossible to treat successfully"?

25 A. Yes.

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01 MARK MONIQUE

02 Q. And, for these reasons, what --
03 what does Dr. Foulger state in the last
04 sentence of that paragraph?

05 A. I believe there are a very few
06 instances in which benzol cannot be replaced
07 by other less hazardous substances.

08 Q. Did he say less hazardous
09 solvents?

10 A. Correct, yeah.

11 Q. So assuming that DuPont was a
12 member of the National Paint and Coatings
13 Association, along with Savogran in the
14 1970s, this is the type of information that
15 could have been exchanged between Savogran
16 and DuPont?

17 MS. BUSCH: Object to form,
18 calls for speculation.

19 THE WITNESS: I have no idea,
20 Andrew.

21 BY MR. DuPONT:

22 Q. Well, here we see DuPont, their
23 director of medical research is writing to
24 another company, Cosden Petroleum
25 Corporation, and providing them with their

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01 MARK MONIQUE

02 thoughts about the health hazards of benzene.

03 Do you see that?

04 A. Andrew, how could I state any
05 knowledge of something from 60 years ago? I
06 don't know that.

07 Q. Okay. Do you have any reason
08 to believe that this information about the
09 health hazards of benzene is information
10 DuPont would not have shared with the
11 Savogran Company in the past?

12 MS. BUSCH: Objection, calls for
13 speculation.

14 THE WITNESS: I don't know.

15 - - -

16 (Whereupon the document was
17 marked, for identification purposes,
18 as Monique Exhibit Number 18.)

19 - - -

20 BY MR. DuPONT:

21 Q. I'll hand to you Exhibit 18.
22 Do you see that Exhibit 18 is a May 16, 1967
23 letter from the State of Illinois, Department
24 of Labor, Division of Safety Inspection and
25 Education?

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01 MARK MONIQUE
02 A. Yes.
03 Q. And it's addressed to an E.C.
04 Friesendorf with Handschy Chemical Company?
05 A. Yes.
06 Q. And in this letter from May 16,
07 1967, the Superintendent, Edmund Kornowicz,
08 from the State of Illinois Department of
09 Labor, do you see that he's reporting on an
10 investigation that was conducted of Handschy?
11 A. Yes.
12 Q. And the Department of Labor
13 from the State of Illinois reports that the
14 investigation found that a very hazardous
15 solvent was used in Handschy's product
16 Hancolite and Special Type Wash?
17 A. Yes.
18 Q. And it identifies that solvent
19 to be benzene or benzol?
20 A. Yes.
21 Q. Now, in May of 1967, do you see
22 that the State of Illinois is telling this
23 manufacturer of a product with benzene in it
24 that, "Chronic low level exposures to this
25 solvent," meaning benzene, "may produce

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Monique, Mark

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01 MARK MONIQUE

02 alterations of blood elements most commonly
03 resulting in anemia, leukopenia and
04 thrombocytopenia"?

05 A. Yes.

06 Q. And do you see that the State
07 of Illinois is continuing to tell this
08 manufacturer of a benzene product that
09 benzene is a suspected carcinogenic agent?

10 A. Yes.

11 Q. And the Department of Labor in
12 the State of Illinois continues to write,
13 quote, All forms of acute and chronic
14 leukemia have been observed in workers with
15 benzene intoxication?

16 A. Yes.

17 Q. Now, do you have any reason to
18 believe that if Savogran had asked the State
19 of Illinois where it was manufacturing Kutzit
20 with benzene in it, what the health hazards
21 of benzene were, that it wouldn't have
22 learned that benzene was reported to cause
23 all forms of acute and chronic leukemia?

24 MS. BUSCH: Objection, calls for
25 speculation, argumentative.

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01 MARK MONIQUE

02 THE WITNESS: I can't make any
03 statements on -- like I said, on
04 something from 1967 and have knowledge
05 of what the, you know, previous owners
06 were thinking or what was going on. I
07 mean, that's just -- you know, I was
08 -- I was born in '63.

09 BY MR. DuPONT:

10 Q. And I appreciate that.

11 But we can agree that this was
12 information that was available to Savogran
13 from the State of Illinois, had they asked?

14 MS. BUSCH: Objection, calls for
15 speculation.

16 THE WITNESS: I don't know. I'd
17 love to tell you I could, but I don't.

18 BY MR. DuPONT:

19 Q. Do you see that the State of
20 Illinois is, in fact, urging that this
21 manufacturer substitute the solvent benzene
22 with a less toxic material to reduce the
23 health hazards to a minimum?

24 A. Yes.

25 Q. Do you have any reason to

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01

MARK MONIQUE

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believe that had Savogran contacted the State
of Illinois to educate itself about benzene
and its product Kutzit, it wouldn't have been
urged to take benzene out and substitute it
with a less toxic material?

MS. BUSCH: Objection, calls for
speculation. Argumentative.

THE WITNESS: I have no -- no
idea.

- - -

(Whereupon the document was
marked, for identification, as Monique
Exhibit Number 19.)

- - -

BY MR. DuPONT:

Q. I hand to you Exhibit 19.

A. Thank you.

Q. Do you see that Exhibit 19 is a
May 15, 1967 letter from the State of
Illinois, Department of Labor, Division of
Safety Inspection and Education?

A. Yes.

Q. And that's to the same company,
Handschy Chemical Company?

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01 MARK MONIQUE

02 A. Yes.

03 Q. And the State of Illinois is
04 stating here that Handschy has been found in
05 violation of the Illinois Health and Safety
06 Act and Health and Safety Rules?

07 A. Yes.

08 Q. And attached to this letter is
09 a three page document. Do you see that?

10 A. Yeah.

11 Q. And that's also on a State of
12 Illinois, Department of Labor form?

13 A. Yes.

14 Q. And it's the safety inspection
15 unit within the Department of Labor. Do you
16 see that?

17 A. Yes. Uh-huh.

18 Q. And on the first page of this
19 form there's writing that says, "The
20 following is a list of violations of the
21 rules and regulations promulgated by the
22 Illinois Industrial Commission by authority
23 of the Health and Safety Act, Chapter 48,
24 Illinois revised statute, 1947." Do you see
25 that?

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01 MARK MONIQUE

02 A. Yes.

03 Q. If you turn to the next page,
04 there's a list on the first page and the
05 second page of seven violations that were
06 found by the Department of Labor. Do you see
07 that?

08 A. Yes.

09 Q. The sixth violation of Illinois
10 Health and Safety Act that's reported here,
11 can you read what it says?

12 A. Number six?

13 Q. Yes, please.

14 A. "Provide a substitute cleaner
15 eliminating the use of benzene (benzol) for
16 cleaning of pans and equipment to minimize
17 the harmful effects of the solvent as per
18 part F, Section 3, Rules 1, 2 and 7," looks
19 like K as in kilo, "and Section 3 of the
20 Health and Safety Act."

21 Q. So here, in 1967, the
22 Department of Labor of the State of Illinois
23 was writing that it's a violation of the law
24 of Illinois to use benzene for cleaning of
25 pans and equipment?

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01 MARK MONIQUE
02 MS. BUSCH: Object to form.
03 THE WITNESS: Yes.
04 BY MR. DuPONT:
05 Q. Are you familiar with the
06 United States Department of Health?
07 A. No.
08 - - -
09 (Whereupon the document was
10 marked, for identification purposes,
11 as Monique Exhibit Number 20.)
12 - - -
13 BY MR. DuPONT:
14 Q. I'm going to hand to you
15 Exhibit 20. Have you heard of the Public
16 Health Service?
17 A. Yes.
18 Q. All right. They're actually
19 part of the Uniform Services of the United
20 States Federal Government?
21 A. Yes. Uh-huh.
22 Q. Turn to the first page of this
23 exhibit, Exhibit 20. This is a publication
24 of the United States Public Health Service
25 entitled, "Occupational Diseases, a Guide to

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01 MARK MONIQUE

02 their Recognition."

03 MS. BUSCH: Do you have an extra
04 copy, Andrew?

05 Thank you.

06 BY MR. DuPONT:

07 Q. Let me re-ask the question.
08 Exhibit 20 is a publication of the Public
09 Health Service of the United States entitled,
10 "Occupational Diseases, a Guide to their
11 Recognition."

12 A. Yes.

13 Q. And if you turn to the fourth
14 page of the exhibit, we see that it was
15 published in 1964?

16 A. Yes.

17 Q. If you can turn to the product
18 -- strike that.

19 If you turn to the page that
20 has the number 87 at the top right-hand
21 corner of this exhibit.

22 A. (Complying with request.)

23 Yes.

24 Q. There's a section within this
25 -- within this book on benzene. Do you see

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01 MARK MONIQUE
02 that?
03 A. Yes.
04 Q. And the harmful effects of
05 benzene?
06 A. Yes.
07 Q. And under harmful effects, in
08 the last full paragraph there, this
09 publication from the United States Public
10 Health Service is advising users that chronic
11 low level exposures, meaning to benzene, may
12 produce alterations of blood elements most
13 commonly resulting in anemia, leukopenia and
14 thrombocytopenia.
15 A. Yes.
16 Q. If you turn to the next page,
17 it's page 88 of the document. The Public
18 Health Service is reporting in 1964 that all
19 forms of acute and chronic leukemia have been
20 observed in workers with benzene
21 intoxication. Do you see that?
22 A. Where is it?
23 Q. The second paragraph on page
24 88, under occupational diseases?
25 A. Yes. Uh-huh.

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01 MARK MONIQUE

02 Q. It's written, all forms of
03 acute and chronic leukemia have been observed
04 in workers with benzene intoxication?

05 A. Yes.

06 Q. This, again, would have been
07 information available to Savogran in 1964,
08 had it consulted with the federal government
09 on the health hazards of benzene?

10 MS. BUSCH: Objection.

11 THE WITNESS: Yes.

12 BY MR. DuPONT:

13 Q. Has Savogran ever used
14 textbooks in order to educate itself about
15 the health hazards of the chemicals it used
16 in its products?

17 A. No.

18 MR. DuPONT: Let's go off the
19 record.

20 VIDEO TECHNICIAN: Off the
21 record at 11:45.

22 - - -

23 (Whereupon there was a recess in
24 the proceeding.)

25 - - -

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01 MARK MONIQUE
02 VIDEO TECHNICIAN: Back on the
03 record at 11:56. Beginning of disc
04 number three.
05 BY MR. DuPONT:
06 Q. Have you read any of the
07 deposition testimony given in this case?
08 A. Yes.
09 Q. Okay. Whose deposition
10 testimony did you read?
11 A. I read Mrs. Lee and I read the
12 two sons.
13 Q. All right. Did you read Mark
14 Lee and Gary Lee's description of how the
15 product did -- strike that.
16 Did you read Mark and Gary
17 Lee's description of how their father
18 performed furniture refinishing work?
19 A. Yes.
20 Q. Did you read Mark Lee's
21 description of how his dad used the Kutzit
22 product?
23 A. Yes.
24 Q. And do you have any comments
25 about how his -- he described his dad using

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01 MARK MONIQUE

02 the product?

03 A. No, none.

04 Q. Is the description of his dad's
05 use of the Kutzit product typical for what
06 you would expect a Kutzit product user to do?

07 A. Yes.

08 Q. He used the product in the way
09 that it was intended to be used?

10 A. There wasn't a lot -- I mean,
11 there wasn't a lot of detail there. It
12 sounded consistent.

13 Q. Have you conducted any
14 investigation of which stores and retailers
15 were selling Kutzit in North Carolina during
16 the 1960s and 1970s?

17 A. No.

18 Q. Did you read, in Mark Lee or
19 Gary Lee's testimony, the description of
20 where their dad obtained the Kutzit product?

21 A. Yes.

22 Q. And the type of store that they
23 described, that's the type of store you would
24 expect Kutzit to be sold at?

25 A. Not a dry cleaner. It's not

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01 MARK MONIQUE
02 really our niche.
03 Q. Well, you understood that they
04 testified that the store had various products
05 that it sold?
06 A. Yes.
07 Q. Not just dry cleaning services
08 --
09 A. Right.
10 Q. -- but it had a --
11 A. Right.
12 Q. -- a multitude of products that
13 it sold; right?
14 A. Yes.
15 Q. Other paint and paint-related
16 products; right?
17 A. Yes.
18 Q. And consistent with what you
19 told me before, you would expect Kutzit to be
20 bought at a store that sold paint and
21 paint-related products; fair?
22 A. Yes.
23 Q. I'd like to go back to Exhibit
24 10, if you would, please.
25 A. Which one was that one?

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01 MARK MONIQUE
02 Q. This is the AMSCO --
03 A. Sure.
04 Q. -- Division of Union Oil
05 Company of California MSDS from
06 November 1975.
07 A. It happens to be the last one.
08 Got it.
09 MS. BUSCH: I have that marked
10 as 9. Was it 10?
11 THE WITNESS: Yeah, it's 9 on
12 this one too.
13 BY MR. DuPONT:
14 Q. 9, excuse me. We're looking at
15 Exhibit 9, which is Bates Number Lee-Savogran
16 86 through 87 and it's a November 1975 MSDS
17 from AMSCO Division of Union Oil Company of
18 California?
19 A. Yes.
20 Q. There's an address listed for
21 AMSCO in Schaumburg, Illinois. Do you see
22 that?
23 A. Yes.
24 Q. Do you know where Schaumburg,
25 Illinois is in relation to Addison, Illinois?

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01 MARK MONIQUE

02 A. I don't.

03 Q. Do you know who was
04 manufacturing benzene in Illinois during the
05 1960s and 1970s?

06 A. I don't.

07 Q. Do you know which manufacturers
08 of benzene were close in proximity to
09 Savogran's facility in Massachusetts in the
10 sixties and seventies?

11 A. No idea.

12 Q. Did Savogran have an
13 expectation that the companies that sold it
14 benzene would provide Savogran with all the
15 information that was available about the
16 health hazards of benzene?

17 A. Yes.

18 Q. Would it be responsible in
19 Savogran's view -- strike that.

20 Would it be irresponsible, in
21 Savogran's view, for a manufacturer of
22 benzene to withhold information that it had
23 about the health hazards of benzene when it
24 sold that benzene to Savogran?

25 MR. McDERMOTT: Objection to

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01 MARK MONIQUE

02 form.

03 THE WITNESS: Yes.

04 BY MR. DuPONT:

05 Q. I want to go back and talk to
06 you about your discussions with Mr. Fish from
07 Ashland.

08 A. Yes.

09 Q. Did you learn from Mr. Fish, or
10 anyone else, who else was selling chemicals
11 to Savogran in this time period of about
12 1987, when you started with the company?

13 MR. SILVERMAN: Objection to
14 form.

15 BY MR. DuPONT:

16 Q. Well, let me ask you: Did you
17 learn from Mr. Fish whether there was anybody
18 else selling chemicals to Savogran in this
19 1980s period, when you learned that Ashland
20 was selling to Savogran?

21 A. Mr. Fish wouldn't have known
22 that. He wouldn't know what -- you know,
23 what competitors -- other competitors were
24 purchase -- you know, Savogran was using.

25 Q. Were there other companies that

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01 MARK MONIQUE
02 were selling chemicals to Savogran in the
03 late 1980s, besides Ashland?
04 A. Yes.
05 Q. Who were they?
06 A. We purchased from the chemical
07 distribution division of Unocal. We
08 purchased -- we purchased a lot from all the
09 local distributors in the area. One of the
10 big ones in the day was Houghton.
11 Q. Any others?
12 A. Those are the ones that come to
13 mind.
14 Q. How do you spell Houghton?
15 A. H-O-U-G-H-T-O-N.
16 Q. What chemicals was Savogran
17 buying from Unocal in the late 1980s?
18 A. I couldn't tell you
19 specifically what chemicals we were buying,
20 but we, you know, they -- you know, a lot of
21 these -- the big ones, acetone, toluene,
22 methanol, those were commodities. So, you
23 know, those would get shopped around, and
24 whoever had the best price, you know, that's
25 who they would purchase from.

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01 MARK MONIQUE

02 Q. So they would get things like
03 acetone, toluene and methanol from Ashland
04 and Unocal?

05 A. It would Ashland, Unocal. It
06 could have been Houghton, you know. Whoever
07 had the best price of the day.

08 Q. Were these same companies
09 selling the toluene, acetone to Savogran that
10 was used in the Illinois manufacturing
11 facility?

12 A. No.

13 Q. Who was selling to Savogran in
14 Illinois?

15 A. I don't know.

16 Q. Did you gain an understanding
17 or learn that Unocal had been selling
18 chemicals to Savogran before you began in
19 1987?

20 MR. McDERMOTT: Objection.

21 THE WITNESS: Yes. Only because
22 John Gale had a very strong
23 relationship with one of the sales
24 guys over there.

25 BY MR. DuPONT:

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01 MARK MONIQUE
02 Q. Who was that sales guy?
03 A. His name was Charlie Hoar,
04 H-O-A-R.
05 MR. McDERMOTT: Did you get my
06 objection to that last one?
07 COURT REPORTER: Yes.
08 THE WITNESS: Sorry.
09 BY MR. DuPONT:
10 Q. And you said John Gale had a
11 strong relationship with Charlie Hoar from
12 Unocal?
13 A. Yes. That's my -- that's my
14 recollection.
15 Q. Do you understand that this was
16 a long term relationship by the time you
17 started in 1987?
18 MR. McDERMOTT: Objection to
19 form.
20 THE WITNESS: Yes.
21 BY MR. DuPONT:
22 Q. About how old was Charlie Hoar?
23 Did you get to meet him?
24 A. Oh, yeah. Yes. Yep.
25 Q. How old was he in 1987?

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01 MARK MONIQUE

02 A. Probably fifties.

03 Q. Do you know if he's still with
04 Unocal?

05 A. I'm not even sure he's still
06 alive. He was retired the last time I -- I
07 spoke to him.

08 Q. When did you last speak with
09 Charlie Hoar?

10 A. Ten years ago.

11 Q. And what occasions did you have
12 to talk to him?

13 A. He was in the National Guard,
14 just like I was in the National Guard. He
15 was trying to recruit me for -- for -- it was
16 a National Guard group of retired guys.

17 Q. How about Warren Fish, when's
18 the last time you spoke with Warren Fish?

19 A. Probably the same thing.
20 10 years ago, 15 years ago.

21 Q. Do you know if Warren Fish is
22 still with Ashland?

23 A. I'm not even sure he's still
24 alive.

25 Q. How old would he be today?

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 A. He's got to be in -- he'd have
03 to be in his eighties, I would think.
04 Q. Do you know where Mr. Fish
05 lived?
06 A. I don't.
07 Q. Do you know where Charlie Hoar
08 lived?
09 A. I don't.
10 Q. Were Charlie Hoar and John Gale
11 friends outside of work as well?
12 A. Yes.
13 Q. Did they socialize and do
14 things together?
15 A. Go to industry dinners, things
16 like that, yeah.
17 Q. And what type of industry
18 dinners?
19 A. There was different societies
20 that, you know, would have get together
21 dinners. Attend things like that.
22 Q. Were these industry
23 organizations?
24 A. Right. Yeah, they're just
25 clubs, you know. These -- those are more

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01

MARK MONIQUE

02

social than anything. There's a big one in

03

New England called the Chem Club. It's still

04

around. A lot of -- a lot of guys in the

05

industry, you know, they just -- it's a

06

social thing. Strictly social.

07

Q. The Chem Club, is it called?

08

A. Right. Yes. Yeah. It's a

09

chemical club in New England.

10

Q. Was there a sales

11

representative from -- from Houghton who John

12

Gale or anybody else at Savogran had a strong

13

relationship with?

14

A. Yes.

15

Q. Who was that?

16

A. It was Procter Houghton.

17

Q. Procter Houghton?

18

A. Yes.

19

Q. Was he an owner of the company?

20

A. Yes.

21

Q. And Houghton was a distributor,

22

as opposed to a manufacturer of solvents?

23

A. Correct.

24

Q. Do you know whose solvents they

25

distributed?

Transcript of Monique, Mark

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01 MARK MONIQUE
02 A. I don't.
03 Q. How old was Procter Houghton?
04 A. He's got to be -- he's
05 definitely got to be passed away by now.
06 He's got to be well over a hundred, I would
07 think, yeah.
08 Q. Were there any other sales
09 representatives from Houghton that Savogran
10 dealt with that you're able to identify?
11 A. In that day and age?
12 Q. Yes.
13 A. Not that I can recall.
14 Q. Does Savogran continue to deal
15 with Houghton?
16 A. Houghton was purchased by
17 Brenntag. We don't do a lot of business with
18 them.
19 Q. When was Houghton purchased by
20 Brenntag?
21 A. Maybe five years ago.
22 MR. WALKER: Can you spell that
23 for us?
24 THE WITNESS: Which?
25 MR. WALKER: The second one.

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 THE WITNESS: Brenntag,

03 B-R-E-N-N-T-A-G, Brenntag. They're a
04 national distributor. They compete
05 with all the other guys. Yeah.

06 BY MR. DuPONT:

07 Q. Were there other salespersons
08 from Unocal, besides Charlie Hoar that --
09 that Savogran dealt with?

10 A. That's the only one I remember.

11 Q. And were there other sales
12 representatives from Ashland, besides Warren
13 Fish, that Savogran dealt with?

14 A. My mother's retired from
15 Ashland. Now, Nexeo.

16 Q. Was your mother a sales
17 representative to Savogran?

18 A. No, she wasn't. That would be
19 a little insidious, wouldn't it?

20 Q. Do you have any knowledge of
21 Ashland ever providing a hazard determination
22 study that it had for toluene or xylene to
23 Savogran?

24 A. No.

25 Q. Does Savogran have records that

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 indicate the years that it participated in
03 these various industry organizations that
04 you've identified for us today?
05 A. No.
06 Q. How far back in time does
07 Savogran keep its records of the formulas of
08 the Strypeeze and I think it was the super
09 paint remover product we talked about?
10 A. You're talking about computer
11 records or just -- just records in general?
12 Q. Records in general.
13 A. It's just a -- you know, we --
14 we're a small -- you know, very, very small
15 company. And, you know, there's never been a
16 records retention policy. So it's -- you
17 know, to be perfectly honest, it's just very
18 haphazard. It's a lot tighter now, you know.
19 Q. In your experience, when
20 Savogran dealt with its suppliers of
21 chemicals, did it make its suppliers aware of
22 what it was using their chemicals for, what
23 types of products?
24 A. Not necessarily.
25 Q. Did Savogran -- it was -- its

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 products, like Strypeeze and Kutzit, they
03 were -- they were very well known products in
04 the industry. Is that fair?

05 A. Yes. We like to think so,
06 yeah.

07 Q. And did representatives of
08 Ashland and Unocal and Houghton actually
09 visit the plant at Savogran?

10 A. Yes, they --

11 MR. McDERMOTT: Objection to
12 form.

13 THE WITNESS: I'm sorry. They
14 made sales -- sales calls. Yeah.

15 BY MR. DuPONT:

16 Q. And when they made sales calls,
17 did they -- was there literature and
18 containers available from which they could
19 understand what types of products Savogran
20 was manufacturing and selling?

21 MR. McDERMOTT: Objection to
22 form.

23 THE WITNESS: Yes.

24 BY MR. DuPONT:

25 Q. I mean, there was no secret

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Monique, Mark

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01 MARK MONIQUE
02 what Savogran was using the chemicals it
03 bought from suppliers for. It had certain
04 lines of products that were predominantly in
05 the -- in the paint stripping business.
06 Fair?
07 MR. McDERMOTT: Objection to
08 form.
09 THE WITNESS: Yes.
10 BY MR. DuPONT:
11 Q. And these were largely consumer
12 products; right?
13 A. Yes.
14 Q. And that was information that
15 was out there and available to Savogran's
16 chemical suppliers?
17 MR. McDERMOTT: Objection, form.
18 THE WITNESS: Yes.
19 BY MR. DuPONT:
20 Q. And we can reasonably conclude
21 that that would have been true in the 1960s
22 and 1970s as well?
23 MR. McDERMOTT: Objection to
24 form.
25 THE WITNESS: Again, it's hard

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 for me to say anything about the
03 sixties or seventies.

04 BY MR. DuPONT:

05 Q. But based on the nature of
06 Savogran's business, the products that it
07 manufactured and sold and its focus in this
08 consumer paint stripping product line, it
09 would have been known or easily knowable by
10 the suppliers of chemicals to Savogran what
11 their chemicals were going into?

12 MR. McDERMOTT: Objection to
13 form.

14 THE WITNESS: I can't stipulate
15 anything from the sixties or
16 seventies, Andrew. It's just too long
17 ago.

18 BY MR. DuPONT:

19 Q. Those are all the questions I
20 have. Thank you very much for your time.

21 A. All right. Thank you.
22 Pleasure.

23 - - -

24 VIDEO TECHNICIAN: Are there any
25 other questions?

Transcript of Monique, Mark

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Rhyne Trial Master

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01 MARK MONIQUE
02 MR. SILVERMAN: Yes.
03 VIDEO TECHNICIAN: Off the
04 record at 12:12.
05 - - -
06 (Discussion held off the
07 record.)
08 - - -
09 VIDEO TECHNICIAN: Back on the
10 record at 12:13.
11 BY MR. SILVERMAN:
12 Q. Good afternoon, Mr. Monique.
13 My name is Zach Silverman, I'm from Fishkin
14 Lucks, and I represent Univar National in
15 this action. I just have a couple of
16 questions for you.
17 You mentioned that Ashland was
18 one of Savogran's suppliers of chemicals; is
19 that correct?
20 A. Yes.
21 Q. And they were in 1987, when you
22 arrived at Savogran; is that correct?
23 A. Yes.
24 Q. And you don't know how long
25 before that they were suppliers, if at all?

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 A. No idea.

03 Q. And they are still suppliers of
04 chemicals today; is that correct?

05 A. Ashland is not. Only because
06 now it's -- you know, Ashland doesn't own
07 that business anymore.

08 Q. Okay.

09 A. It's gone to Nexeo.

10 Q. Okay.

11 A. The other one was Univar? Is
12 what you said?

13 Q. I don't have any questions
14 about Univar.

15 A. Okay. Okay.

16 Q. So when did Ashland stop
17 supplying --

18 A. Whenever they sold the
19 business.

20 Q. And do you know if there were
21 any gaps in between '87 and when they sold
22 the business that they were not supplying
23 Savogran?

24 A. There were no gaps.

25 Q. There were no gaps?

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 A. No.
03 Q. Okay. And it's fair to say
04 that Ashland wasn't the only supplier of
05 chemicals to Savogran during these times?
06 A. Oh, definitely.
07 Q. There were several others;
08 right?
09 A. Yes. Correct.
10 Q. Could you estimate how many?
11 A. Anywhere from -- are you
12 talking about solvents now?
13 Q. Any chemical.
14 A. Oh, there could have been, you
15 know, a couple dozen.
16 Q. What about solvents?
17 A. Probably no more than ten.
18 Q. More than five?
19 A. Probably.
20 Q. So probably about between five
21 and 10?
22 A. Yes.
23 Q. Do you know if Ashland supplied
24 any chemicals that were used in Kutzit?
25 A. In '87 onward?

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 Q. At any time?

03 A. Yes. I can definitely say from
04 '87 onward, yes.

05 Q. Do you know for sure that the
06 chemicals supplied by Ashland were
07 definitively used in Kutzit?

08 A. Yes.

09 Q. And how do you know that?

10 A. Well, they were -- they were --
11 in that day, between -- you know, they were
12 the number one or number two supplier of
13 acetone, toluene and methanol.

14 Q. Okay.

15 A. Yeah, we got a lot of product
16 from Ashland in the day.

17 Q. What about benzene?

18 A. I have no idea.

19 Q. You have no idea whether
20 Ashland supplied benzene at all?

21 A. Correct.

22 Q. And you have no idea whether,
23 if Ashland supplied benzene, that benzene
24 made it into Kutzit?

25 A. Correct.

Transcript of Monique, Mark

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Rhyne Trial Master

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01 MARK MONIQUE

02 Q. Okay. And as for the other
03 chemicals, you have no idea at what times
04 those chemicals from Ashland would have been
05 in Kutzit product?

06 A. Correct.

07 Q. And at any given time it could
08 have been a chemical from another company, as
09 opposed to Ashland, that made it into Kutzit?

10 A. True.

11 Q. Bear with me for a minute.

12 A. That's fine.

13 VIDEO TECHNICIAN: Off the
14 record at 12:16.

15

- - -

16 (Discussion held off the
17 record.)

18

- - -

19 VIDEO TECHNICIAN: Back on the
20 record, 12:18.

21 BY MR. SILVERMAN:

22 Q. Can you give me a complete and
23 definitive list of every chemical sold by
24 Ashland to Savogran that you know for certain
25 made it into a Kutzit product?

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 A. I can from 2000 till, you know,
03 present.
04 Q. And before that you can't at
05 all?
06 A. Correct.
07 Q. So from 2000 to the present,
08 can you give me that definitive list of the
09 product that you know --
10 A. From 2000 to the present?
11 Q. Right.
12 A. Yes.
13 Q. -- from Ashland that you know
14 definitively made it into Kutzit products?
15 A. Oh, that made it into the
16 Kutzit, no.
17 Q. No?
18 A. No. No, we don't lot track.
19 Q. So you don't keep track of what
20 chemicals you purchase from a company and
21 what products specifically they go into?
22 A. Correct.
23 Q. Okay. I have no further
24 questions then. Thank you.
25 A. Yep.

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Monique, Mark

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01 MARK MONIQUE
02 VIDEO TECHNICIAN: Any other
03 questions?
04 MR. McDERMOTT: Yeah, I just
05 have maybe two.
06 VIDEO TECHNICIAN: Off the
07 record at 12:19.
08 - - -
09 (Discussion held off the
10 record.)
11 - - -
12 VIDEO TECHNICIAN: Back on the
13 record, 12:19.
14 BY MR. McDERMOTT:
15 Q. Sir, we just met earlier, my
16 name is Jack McDermott. I represent Unocal,
17 Chevron, ExxonMobil and CRC in this lawsuit.
18 Just a couple of follow-up questions.
19 A. Uh-huh.
20 Q. Is it right that you testified
21 earlier that in the late 1980s that Unocal
22 supplied certain chemicals to Savogran at
23 various times?
24 A. Yes.
25 Q. Prior to 1987, do you know

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Monique, Mark

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01 MARK MONIQUE

02 whether Unocal sold chemicals to Savogran?

03 A. I have no knowledge of that.

04 Q. Do you know whether Unocal sold
05 benzene to Savogran at any time?

06 A. I have no knowledge.

07 Q. Those are all the questions I
08 have. Thank you.

09 - - -

10 (Discussion held off the
11 record.)

12 - - -

13 BY MR. DuPONT:

14 Q. It's my understanding that for
15 a period of a time there was a law firm that
16 was directing Savogran?

17 A. Yes.

18 Q. All right. Have you conducted
19 any investigation to determine the name of
20 that law firm?

21 A. No.

22 Q. The names of any of the lawyers
23 in the firm?

24 A. One of them was David Fitz.

25 Q. How do you know that?

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Monique, Mark

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01 MARK MONIQUE

02 A. It's just something I remember.
03 They were instrumental in the ESOP
04 transaction.

05 Q. That law firm, was that in
06 Boston?

07 A. Yes.

08 Q. How many -- how many lawyers
09 were in the firm? Was it a big firm, small
10 firm?

11 A. I'm not sure. I had just
12 started with the company when it ESOP'd, I
13 was there like a year. And I wasn't that
14 close to any of that.

15 Q. Have you or anyone else on
16 behalf of Savogran attempted to reach out to
17 the lawyers or law firm to see what documents
18 they have related to Savogran and its
19 history?

20 A. They're -- they're all gone.

21 Q. How do you know that?

22 A. They are -- the firm is not
23 around anymore. And we lost touch with the
24 two lawyers. I'm not even sure they're still
25 alive.

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Monique, Mark

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01 MARK MONIQUE

02 Q. Well, do you know the name of
03 the firm?

04 A. I don't, no.

05 Q. Have you investigated whether
06 the firm is still around?

07 A. Years ago.

08 Q. When did you do that?

09 A. I don't -- I don't -- I
10 honestly don't remember. But my recollection
11 is, it's gone. Yeah.

12 Q. Now, when Savogran stored
13 chemicals before they were blended into a
14 product in underground storage tanks --

15 A. Yes.

16 Q. And then there would be --
17 would there be one tank per chemical?

18 A. There were -- there was one
19 tank for toluene, one tank for acetone, one
20 tank for methanol and two tanks for methylene
21 chloride.

22 Q. And so would Savogran use the
23 toluene in that underground storage tank, and
24 then once it was basically depleted of
25 toluene order a new shipment of toluene in?

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Monique, Mark

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01 MARK MONIQUE

02 A. Yes.

03 Q. And then it would get an order
04 sufficient to fill that tank with toluene
05 from one supplier, like Ashland?

06 A. Not necessarily to fill it.
07 You know, if we were -- if it's the winter
08 when things are slow, we might only purchase,
09 you know, half a tank wagon. Yeah.

10 Q. And then would it use that half
11 a tank wagon worth of toluene before it went
12 out and bought more toluene?

13 A. The tank would get run down to
14 -- you know, it's a 10,000 gallon tank. And
15 say it would get run down to, you know,
16 thousand gallons.

17 Q. So you would use 90 percent of
18 the -- of the toluene from a supplier like
19 Ashland before you went out and bought more
20 toluene?

21 A. Yes.

22 MR. SILVERMAN: Objection to
23 form.

24 THE WITNESS: Yep.

25 BY MR. DuPONT:

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01 MARK MONIQUE

02 Q. So there would be -- there
03 would be periods of time where that tank only
04 had one supplier's toluene in it, like
05 Ashland's toluene?

06 MR. SILVERMAN: Objection to
07 form.

08 THE WITNESS: Not necessarily,
09 it was always getting commingled. You
10 know, you'd have what was left in
11 there and then dump somebody else's on
12 top of it. They would all get mixed
13 together.

14 BY MR. DuPONT:

15 Q. But there would be periods of
16 time when you got -- 90 percent of the
17 toluene in that tank is one supplier's
18 toluene, like Ashland?

19 A. Yes. Yeah.

20 MR. SILVERMAN: Objection to
21 form.

22 BY MR. DuPONT:

23 Q. And there would be periods of
24 time when you guys probably made consecutive
25 orders of toluene from a supplier like

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Monique, Mark

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01 MARK MONIQUE
02 Ashland?
03 MR. SILVERMAN: Objection to
04 form.
05 THE WITNESS: If they had the
06 best price, then that's certainly,
07 yeah, feasible.
08 BY MR. DuPONT:
09 Q. All right.
10 A. Yeah.
11 Q. So there would be periods of
12 time where one supplier was supplying all the
13 toluene that was available to go into all the
14 products, including Kutzit?
15 A. It's certainly possible, yeah.
16 Q. And the same would be true for
17 -- for Unocal?
18 MR. McDERMOTT: Objection to
19 form.
20 THE WITNESS: Yes.
21 BY MR. DuPONT:
22 Q. And you said Ashland was one of
23 the top one or two suppliers of acetone,
24 toluene and methanol to Kutzit from 1987 and
25 afterwards.

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Rhyne Trial Master

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01 MARK MONIQUE

02 A. Uh-huh.

03 Q. Was Unocal the other?

04 MR. McDERMOTT: Objection to
05 form.

06 MS. BUSCH: Object to form. You
07 said Kutzit instead of Savogran.

08 MR. DuPONT: Strike that.

09 BY MR. DuPONT:

10 Q. You said that Ashland was one
11 of the top one or two suppliers of acetone,
12 toluene and methanol to Savogran from 1987
13 onward. Was Unocal the other one or two top
14 suppliers?

15 MR. SILVERMAN: Objection to
16 form.

17 MR. McDERMOTT: Objection to
18 form.

19 THE WITNESS: It would have
20 either been Houghton or Unocal when I
21 -- when I got there in '87, yeah.
22 Yeah.

23 BY MR. DuPONT:

24 Q. So Ashland was definitely in
25 the top one or two, and Unocal was in the top

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 two or three?
03 A. Correct.
04 MR. SILVERMAN: Objection to
05 form.
06 MR. McDERMOTT: Objection to
07 form.
08 BY MR. DuPONT:
09 Q. And have those three been the
10 top three suppliers since 1987 to the
11 present?
12 MR. SILVERMAN: Objection to
13 form.
14 THE WITNESS: No.
15 BY MR. DuPONT:
16 Q. They were the top three
17 suppliers until when, until Nexeo took over
18 from Ashland?
19 MR. SILVERMAN: Objection to
20 form.
21 THE WITNESS: No. You know,
22 relationships change, businesses
23 change. I think the Unocal location,
24 East Providence, got sold to -- got
25 sold to Univar. So that upset that

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE
02 whole -- that whole thing. I can't
03 even tell you offhand when that
04 happened.
05 Ashland was a strong supplier up
06 until they sold the business to Nexeo.
07 And then, you know, we don't do as
08 much business with them anymore for
09 other business reasons.

10 BY MR. DuPONT:

11 Q. Once Unocal sold that East
12 Providence location to Univar, did Savogran
13 begin buying its solvents from Univar?

14 A. Yes.

15 Q. And about when did that happen?

16 A. I don't remember. I'm sorry,
17 Andrew.

18 Q. Great. Thank you very much.

19 A. You're welcome.

20 MR. SILVERMAN: I've got some
21 follow-up now that you mentioned
22 Univar, so...

23 VIDEO TECHNICIAN: Off the
24 record at 12:26.

25 - - -

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Monique, Mark

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01 MARK MONIQUE
02 (Discussion held off the
03 record.)
04 - - -
05 VIDEO TECHNICIAN: Back on the
06 record at 12:26.
07 BY MR. SILVERMAN:
08 Q. Once, again, this is Zach
09 Silverman. As well as representing Ashland,
10 I represent Univar and I have a couple of
11 questions about Univar now.
12 You said that Univar supplied
13 Savogran with chemicals, but you don't know
14 the dates of when they did so; is that
15 correct?
16 A. Correct. It's a much more
17 recent event, yeah.
18 Q. When did it start?
19 A. Within the last -- definitely
20 within the last ten years. Yeah.
21 Q. Okay. And what chemicals have
22 they supplied to Savogran?
23 A. Oh, acetone, toluene, methanol.
24 We buy some Rohm and Haas acrylic products.
25 Q. I'm sorry, continue.

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Monique, Mark

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01 MARK MONIQUE

02 A. Ammonia, some other oddball
03 stuff, you know.

04 Q. And some of those products are
05 the type of products that go into Kutzit; is
06 that correct?

07 A. Yes.

08 Q. All right. But do you know for
09 sure whether a Univar product has ever made
10 it into Kutzit?

11 A. Yes.

12 Q. How do you know that?

13 A. Well, we've bought -- like I
14 said, we've bought acetone, toluene and
15 methanol from Univar. We do to this day.
16 And the stuff goes -- definitely goes into
17 Kutzit.

18 Q. Well, you have other products;
19 right?

20 A. Yes.

21 Q. And you have other products
22 that use those raw materials; is that
23 correct?

24 A. Yes. Yeah.

25 Q. So it's possible that the

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Monique, Mark

Rhyne Trial Master

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01 MARK MONIQUE

02 Univar -- the product from Univar that you
03 bought went into that other product and not
04 Kutzit?

05 A. It's not very likely, just
06 because, you know, we make -- we buy -- say
07 we buy 6,000 gallons of methanol. We make
08 product in 450 gallon batches. And it's not
09 likely we buy a 6,000 gallon tanker wagon of
10 methanol and just make Kutzit, you know, for
11 a month.

12 Q. Sure. I'm just asking you if
13 it's possible that that stuff never made it
14 into Kutzit, it only made it into the other
15 products?

16 A. Probably not.

17 Q. Probably not?

18 A. Yeah.

19 Q. Okay. And Univar never sold
20 benzene to Savogran. Is that a correct
21 statement?

22 A. I would say, no because -- you
23 know, I think Univar, we just recently
24 started -- well, you know, talking to 1875
25 now. So recently is like a ten year period.

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01 MARK MONIQUE

02 We just recently started doing, you know,
03 business with Univar. Yeah.

04 Q. Once again, as it relates to
05 Univar, you don't track which chemicals from
06 which suppliers go into which of Savogran's
07 products. Is that correct?

08 A. Right. Correct.

09 Q. I have no further questions.
10 Thank you.

11 VIDEO TECHNICIAN: Are there any
12 other questions?

13 (No response.)

14 VIDEO TECHNICIAN: The time now
15 is 12:29. This concludes the
16 deposition. End of disc three of
17 three.

18 - - -
19 (Witness excused.)

20 - - -
21 (Deposition concluded at
22 12:29 p.m.)

23

24

25

Transcript of Monique, Mark

Monique, Mark

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01 MARK MONIQUE
02 C E R T I F I C A T E
03
04
05 I do hereby certify that I am a Notary
06 Public in good standing, that the aforesaid
07 testimony was taken before me, pursuant to
08 notice, at the time and place indicated; that
09 said deponent was by me duly sworn to tell
10 the truth, the whole truth, and nothing but
11 the truth; that the testimony of said
12 deponent was correctly recorded in machine
13 shorthand by me and thereafter transcribed
14 under my supervision with computer-aided
15 transcription; that the deposition is a true
16 and correct record of the testimony given by
17 the witness; and that I am neither of counsel
18 nor kin to any party in said action, nor
19 interested in the outcome thereof.

20
21 WITNESS my hand and official seal this
22 25th day of July, 2016.

23
24
25
26 <%signature%>

27
28 Notary Public

29
30
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35
36

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01 MARK MONIQUE

02 INSTRUCTIONS TO WITNESS

03

04 Please read your deposition over
05 carefully and make any necessary corrections.
06 You should state the reason in the
07 appropriate space on the errata sheet for any
08 corrections that are made.

09 After doing so, please sign the errata
10 sheet and date it.

11 You are signing same subject to the
12 changes you have noted on the errata sheet,
13 which will be attached to your deposition.

14 It is imperative that you return the
15 original errata sheet to the deposing
16 attorney within thirty (30) days of receipt
17 of the deposition transcript by you. If you
18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in
20 court.

21

22

23

24

25

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01	MARK MONIQUE		
02	- - - - -		
03	E R R A T A		
04	- - - - -		
05	PAGE	LINE	CHANGE
06	- - - - -		
07	Reason for Change:		
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18	- - - - -		
19	Reason for Change:		
20	_____		
21	- - - - -		
22	Reason for Change:		
23	_____		
24	- - - - -		
25	Reason for Change:		
26	_____		

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

Page 173

01 MARK MONIQUE

02

03 ACKNOWLEDGMENT OF DEPONENT

04 I, _____, do

05 hereby certify that I have read the foregoing

06 pages __ to __ and that the same is a

07 correct transcription of the answers given by

08 me to the questions therein propounded,

09 except for the corrections or changes in form

10 or substance, if any, noted in the attached

11 Errata Sheet.

12

13

14 DATE

SIGNATURE

15

16 Subscribed and sworn to before

17 me this

18 _____ day of _____, 2016.

19

20 My commission expires:

21

22

23

24 Notary Public

25 Job No. 2344315

Transcript of Monique, Mark

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Exhibit 8

Full Transcript Report

Designation Legend

MONIQUE, MARK - (THOMAS) VOL 1

Plaintiffs' designations are in yellow. There are no counter-designations.

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Page 1

01 SUPERIOR COURT OF CALIFORNIA
02 COUNTY OF ALAMEDA
03
04 - - -
05
06 JIMMY THOMAS and : NO. RGL7882514
07 SONYA THOMAS :
08 :
09 Plaintiff :
10 :
11 v. :
12 :
13 AKZO NOBEL COATINGS, :
14 INC., et al., :
15 :
16 Defendants. :
17
18 - - -
19 May 7, 2019
20 - - -
21 Oral Deposition of MARK
22 MONIQUE, taken pursuant to Notice, at
23 Veritext Boston, 101 Arch Street, Suite 650,
24 Boston, Massachusetts 02110, beginning at
25 11:03 a.m. before Brigitte A. Strain, RPR,
26 FCCR, and Notary Public.
27 - - -
28
29
30
31
32 VERITEXT LEGAL SOLUTIONS
33 MID-ATLANTIC REGION
34 1801 Market Street Suite 1800
35 Philadelphia, Pennsylvania 19103

Transcript of Monique, Mark

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Page 2

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Transcript of Monique, Mark

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Page 4

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Page 6

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01 I N D E X

02 - - -

03

04 Testimony of: MARK MONIQUE

05

06 By Mr. DuPont.....12, 225

07 By Ms. Bonneville.....202

08

09 EXHIBITS

10 - - -

11

12 EXHIBIT NUMBER DESCRIPTION PAGE MARKED

13

14 Monique 1 Collection of Savogran

15 Marketing Materials

16 Savogran 04-19 24

17

18 Monique 2 Kutzit Formula

19 Lee-Savogran 67 36

20 Monique 3 Kutzit Formula

21 Lee-Savogran 88 36

22

23 Monique 4 New Kutzit

24 Lee-Savogran 69 50

25 Monique 5 Kutzit Label

26 Lee-Savogran 71 52

27

28 Monique 6 Kutzit Paint Remover

29 Label, Lee-Savogran 72 54

30 Monique 7 Kutzit Paint Remover

31 Label, Lee-Savogran 73 55

32

33 Monique 8 Letter, 3.11.19 with

34 Attachment 68

35

36

37

38

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01	EXHIBITS (continued):		
02	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED
03	Monique 9	Letter, 3.21.17	81
04	Monique 10	Agreement	120
05	Monique 11	Toxicological Review	
06		On Benzene	
07		Sh-Hi 2611-2616	137
08	Monique 12	Occupational Medicine	
09		And Industrial	
10		Hygiene - Johnstone	
11		USS 2881-2904	149
12			
13	Monique 13	Letter, November 30,	
14		1954	
15		DBZ9002183	155
16			
17	Monique 14	Letter, May 18, 1967	
18		H-D 776	160
19	Monique 15	Letter, 5.15.67	
20		H-D 562-565	161
21			
22	Monique 16	Occupational Diseases	
23		A Guide to Their	
24		Recognition	173
25			
26			
27			
28			
29			
30			
31			
32			
33			

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02	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED
01	EXHIBITS (continued):		
03	Monique 17	Letter, Stodder	
04		5.27.66	
05		Savogran 112	192
06	Monique 18	Letter, Stodder	
07		9.22.64	
08		Savogran 118	194
09	Monique 19	Letter, 12.11.70	
10		Savogran 115	195
11			
12	Monique 20	Letter, 2.26.65	
13		Savogran 116	198
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16			
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28			

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01 SUPPORT INDEX
02 - - -
03 INSTRUCTION NOT TO ANSWER:
04 Page Line
05 (None)
06
07 REQUEST FOR PRODUCTION OF DOCUMENTS:
08 Page Line Description
09 (None)
10
11 STIPULATIONS:
12 Page Line
13 237 5
14
15 QUESTIONS MARKED:
16 Page Line
17 (None)
18
19
20
21
22
23
24

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Page 11

01 VIDEO TECHNICIAN: Good
02 morning. We're going on the record
03 at 11:03 a.m. on -- on May 7th, 2019.

04 Please turn off all cell
05 phones or place them away from the
06 microphones as they can interfere
07 with deposition audio. Audio and
08 video recordings will continue to
09 take place unless all parties agree
10 to go off the record.

11 This is media unit one, in the
12 video recorded deposition of Mark
13 Monique 30(b)(c) -- 30(b)(6) witness
14 for the Savogran Company, taken by
15 counsel for Plaintiff in the matter
16 of Jimmy H. Thomas and Sonya Thomas
17 versus Akzo Nobel Coatings,
18 Incorporated, et al., in the Superior
19 Court for the State California, for
20 the County of Alameda, Number
21 RG178825.

22 This deposition is being held
23 at the Offices for Veritext, located
24 at 101 Arch Street, Boston,

Transcript of Monique, Mark

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01 Massachusetts.

02 My name is Bill Seider from
03 the firm of Veritext. I'm the
04 videographer. The court reporter is
05 Brigitte Strain from the firm of
06 Veritext.

07 I'm not related to this party,
08 nor am I financially interested in
09 the outcome.

10 Counsel and all present in the
11 room will be noted on the steno
12 record.

13 Will the court reporter please
14 swear in the witness and we can
15 proceed.

16 - - -

17 MARK MONIQUE, after having
18 been first duly sworn, was examined
19 and testified as follows:

20 - - -

21 EXAMINATION

22 - - -

23 BY MR. DuPONT:

24 Q. Good morning, Mr. Thomas --

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 Excuse me. Strike that. That's a bad way
02 to start.

03 Good morning, Mr. Monique.

04 A. Good morning.

05 Q. My name is Andrew Dupont and
06 I'm an attorney for Jimmy Thomas and Sonya
07 Thomas. I'm here to take your deposition.

08 As you're aware, in the context of a
09 deposition, if I ask you a question and you
10 don't understand it or hear it, you can let
11 me know that. Right?

12 A. Yes.

13 Q. And we don't want you to guess
14 in response to any questions, but at times
15 you may give estimates. You can give an
16 estimate as long as you're not guessing.
17 All right?

18 A. Yes.

19 Q. All right. You are the
20 president of the Savogran Company?

21 A. Yes.

22 Q. And you're speaking here today
23 on behalf of the Savogran Company in
24 response to a Notice of Deposition that we

Savogran objects
to this designation
on the grounds
that it is vague
and ambiguous,
and lacks

0

MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 served?

02 A. Yes.

03 Q. And did you have an
04 opportunity to review that Notice of
05 Deposition?

06 A. Yes.

07 Q. And you are knowledgeable
08 about the topics that are addressed in the
09 Notice of Deposition?

10 A. Yes.

11 Q. Both through either your
12 personal knowledge or documents that you've
13 reviewed and people that you've spoken to to
14 learn about the history of The Savogran
15 Company?

16 A. Yes.

17 Q. Did you begin to work for The
18 Savogran Company in 1987?

19 A. Yes.

20 Q. And before you began to work
21 for The Savogran Company, did you obtain
22 your Bachelor of Science in 1985 from
23 Brittingham State College?

24 A. Yes.

Savogran objects to
this designation on
the grounds that it is
vague and
ambiguous, and
lacks foundation.

Savogran objects
to this designation
on the grounds that
it is not relevant.

MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

Page 15

01 Q. Did you obtain your job with
02 The Savogran Company after being referred by
03 an employee of Ashland?

04 A. Yes.

05 Q. And was that gentleman's name
06 Warren Fish?

07 A. Yes.

08 Q. Warren Fish was a salesperson
09 employed by Ashland?

10 A. Yes.

11 Q. And your first boss at The
12 Savogran Company was a gentleman by the name
13 of John Gale?

14 A. Yes.

15 Q. And Mr. Gale had a
16 relationship with Warren Fish from Ashland?

17 A. What kind of relationship?

18 Q. Business relationship, whereas
19 Savogran was purchasing product from Ashland
20 at the time that you began to work for
21 Savogran.

22 A. Savogran Norwood, yes.

23 Q. And we'll talk about
24 Savogran's locations, but Savogran, when you

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

Page 16

01 began to work for the company, had its
02 headquarters in Norwood, Massachusetts?

03 A. Yes.

04 Q. And so what you're telling me
05 is that the Savogran Norwood, Massachusetts
06 facility was buying product from Ashland at
07 the time that you began to work with the
08 company in 1987?

09 A. Yes.

10 Q. And that was how Warren Fish,
11 the salesperson from Ashland, and John Gale,
12 your boss at Savogran, had a relationship?

13 MR. LEDGER: Object. Calls
14 for speculation. If you know.

15 THE WITNESS: Yes.

16 BY MR. DuPONT:

17 Q. In fact, you learned from Mr.
18 Gale that Ashland was selling product to
19 Savogran; is that correct?

20 A. I'm not sure I learned it from
21 Mr. Gale specifically.

22 Q. Did you learn it from Mr.
23 Fish, that Ashland was selling product to
24 Savogran?

Transcript of Monique, Mark

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01 A. I don't -- don't remember
02 that kind of detail, you know.

03 Q. I've had the opportunity to
04 take your deposition in the past. Do you
05 remember that?

06 A. Yes. How can you forget that?

07 Q. I'd like to refer you to some
08 of your testimony from the past to see if
09 that helps you remember.

10 A. Sure. What year was that?

11 Q. So you gave a deposition in --
12 on July 21, 2016.

13 A. Okay.

14 Q. All right. And --

15 A. That was three years ago.

16 Q. Yes.

17 A. Okay.

18 Q. So it's understandable that
19 there may be things that you don't remember
20 as well now as you did at that period of
21 time.

22 A. I'll be 57 this year so, yes.

23 Q. Okay. So I'm going to hand to
24 you the transcript from your deposition and

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

Page 18

01 refer you to a portion of that transcript at
02 page 17.

03 A. Okay.

04 Q. And you'll see at page 17,
05 lines four to five, you're asked a question,
06 "Was Warren Fish selling Ashland products to
07 The Savogran Company?" And your answer was,
08 "Yes". Do you see that?

09 A. Yes.

10 Q. And then you were asked the
11 question, "And how did you come to learn
12 that Warren Fish was selling products to The
13 Savogran Company?" And your answer was
14 what?

15 A. What line is that?

16 Q. Sure. We're looking at --

17 A. My mind drifted for a minute
18 there.

19 Q. Line seven, page 17 --

20 A. Yeah, line seven.

21 Q. Line seven. You were asked
22 the question that, "How did you come to
23 learn that Warren Fish was selling products
24 to Savogran Company?"

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01 And your response was, "Well,
02 just when I -- I guess he told me -- I can't
03 really -- you know, don't know
04 specifically?"

05 A. Right.

06 Q. And then you're asked a
07 question on line 13, "You had a conversation
08 with Mr. Fish and you learned Mr. Fish was
09 selling products to The Savogran Company?"
10 And your answer was --

11 A. "I would think so, yeah."

12 Q. -- "I would think so, yeah."

13 Does that help you remember
14 that you had learned from Mr. Fish that
15 Ashland was selling product to The Savogran
16 Company?

17 A. I think it's very similar to
18 the answer I just gave you.

19 Q. Okay.

20 A. Yeah. I don't remember
21 specifically.

22 Q. All right.

23 A. Yeah.

24 Q. Was it your -- your general

Transcript of Monique, Mark

Monique, Mark

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01 impression from discussions with Mr. Fish of
02 Ashland that Ashland had been selling
03 product to The Savogran Company?

04 A. Yes.

05 Q. In 1987, when you joined The
06 Savogran Company, were you a chemist?

07 A. Yes.

08 Q. And you held the position of
09 chemist for about a year, until 1988?

10 A. Geez, I don't remember now, to
11 be honest with you.

12 Q. Did you eventually take the
13 role of the technical director of The
14 Savogran Company?

15 A. Yes.

16 Q. And did you hold the role of
17 the technical director of The Savogran
18 Company until you became the president in
19 2007?

20 A. Yes.

21 Q. And you've been the president
22 of Savogran since 2007?

23 A. Yes.

24 Q. And just to help you remember,

Savogran objects
to this designation
on the grounds that
it is not relevant
and is vague and
ambiguous.

0

MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

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Page 21

01 if you refer to page 22 of your deposition
02 from 2016, at line ten.

03 A. I'm sorry. Did you say page
04 22?

05 Q. 22.

06 A. Okay. Oh, I got it. I'm
07 looking at the wrong page number.

08 Q. Okay. At the deposition, back
09 in 2016, you were asked the question, "And
10 then in 1987, you start with The Savogran
11 Company?"

12 A. Uh-huh.

13 Q. And your answer, like today,
14 was, "Yes." Do you see that?

15 A. Yes.

16 Q. And then the next question
17 you're asked, "And you worked for The
18 Savogran Company from 1987 to the present?"
19 And your answer was "Yes" as well?

20 A. Yes.

21 Q. And then you're asked a
22 question, "You were first a chemist from
23 1987 until 19...", and then before the
24 question was finished you responded, "Till

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

Page 22

01 '88. It was essentially the same job, just
02 a different title. Yeah."

03 Do you see that?

04 A. Yes.

05 Q. Does that help you remember
06 that it was in 1988 that you transitioned to
07 the technical director of The Savogran
08 Company?

09 A. Yes.

10 Q. Okay. Now, I want to talk to
11 you a little bit about the history of The
12 Savogran Company. The Savogran Company
13 began to do business in 1875?

14 A. Yes.

15 Q. And it started off as an
16 alkali company that was making and selling
17 kind of granulated soaps?

18 A. Yes.

19 Q. They were used in some of the
20 textile industry in the Massachusetts area?

21 A. Yes.

22 Q. And Savogran was initially
23 located on what was called the India Wharf
24 in Boston?

Savogran objects to this designation on the grounds that it is not relevant, vague and ambiguous, lacks foundation and assumes facts not in evidence.

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MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

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Rhyne Trial Master

Page 23

01 A. Yes.

02 Q. Did Savogran eventually get
03 into the business of manufacturing and
04 selling paint remover products?

05 A. Yes.

06 Q. And was Savogran actually one
07 of the first paint remover manufacturers in
08 the country?

09 A. Yes.

10 Q. And it started manufacturing
11 paint removers in 1938?

12 A. Yes.

13 Q. And, eventually, did Savogran
14 begin to manufacture a paint remover product
15 called Kutzit?

16 A. Yes.

17 Q. That's spelled K-U-T-Z-I-T?

18 A. Yes.

19 Q. Was the Kutzit product added
20 to the Savogran line some time between 1938
21 and 1949?

22 A. I'm not sure.

23 Q. I hand to you Exhibit 1 to
24 your deposition.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, assumes facts not in evidence, and is not relevant.

0

MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

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01 - - -
02 (Whereupon the document was
03 marked, for identification purposes,
04 as Monique Exhibit Number 1.)
05 - - -

06 BY MR. DuPONT:

07 Q. Take a moment and look at
08 that.

09 A. (Complying with request.)

10 Q. Is Exhibit 1 a collection of
11 marketing material from Savogran?

12 A. They look like price lists.

13 Q. And how are price lists used?

14 A. That was the established price
15 of the product.

16 Q. Were these price lists
17 provided to customers of Savogran?

18 A. Yes.

19 Q. The first of the price lists
20 that's marked as Exhibit 1 has an effective
21 date of July 15th, 1949?

22 A. Yes.

23 Q. And the Kutzit paint remover
24 product is one of the products that appears

Savogran
objects to this
designation on
the grounds
that it is vague
and
ambiguous,
lacks
foundation,
calls for
speculation,
assumes facts
not in
evidence, and
is not relevant.

0

MONIQUE, MARK
- (THOMAS) VOL 1

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01 on that July 15, 1949 price list?

02 A. Yes.

03 Q. And, so, you would agree with
04 me that at least by July of 1949 the Kutzit
05 product was a product being manufactured and
06 sold by Savogran?

07 A. Yes.

08 Q. Savogran had a few other paint
09 removers in its product line in the early
10 years?

11 A. Yes.

12 Q. And eventually it -- the
13 Savogran product line of paint removers grew
14 to about 12 products?

15 A. I'm not sure it was ever that
16 big.

17 Q. Somewhere between three and
18 12?

19 A. Yes.

20 Q. And there were other types of
21 products that Savogran sold as well. There
22 was some tile grouts and patching compounds
23 and cleaners?

24 A. Yes.

Savogran

objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, assumes facts not in evidence, and is not relevant.

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MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

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01 Q. Did The Savogran Company move
02 to its Norwood, Massachusetts facilities in
03 the 1950s?

04 A. Yes.

05 Q. And eventually it added
06 facilities in Addison, Illinois?

07 A. Yes.

08 Q. And was that a manufacturing
09 facility that was added in the 1950s?

10 A. Yes.

11 Q. And you see reference to the
12 price list here that there is a 60 West
13 Superior Street, Chicago, Illinois address
14 associated with Savogran?

15 A. Yes.

16 Q. And do you know what that
17 facility was?

18 A. No.

19 Q. If we look to the second page
20 of Exhibit 2 (sic), it has the Bates Number
21 Savogran 5 at the bottom and is dated
22 September 15, 1950. There is also an
23 address that says, Chicago, but it's 85
24 Industrial Road, Addison, Illinois.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, assumes facts not in evidence, and is not relevant.

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MONIQUE, MARK
- (THOMAS) VOL 1

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01 So, by 1950, would you agree
02 that Savogran had the Addison, Illinois
03 facility?

04 A. Yes.

05 Q. Then there was also a
06 Los Angeles manufacturing facility that was
07 owned by Savogran's West Coast salesperson?

08 A. No.

09 Q. There was a Los Angeles
10 facility that was associated with Savogran;
11 is that fair?

12 A. Yes. Uh-huh.

13 Q. And do you recall whether or
14 not that -- whether that was owned by
15 Savogran's west coast salesperson?

16 A. I don't remember if it was
17 specifically a salesperson. I'm not sure
18 what the relationship was there.

19 Q. All right.

20 A. Yeah.

21 Q. Would you look at page 30 of
22 your deposition from --

23 A. Yeah.

24 Q. -- 2016?

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation and assumes facts not in evidence and calls for speculation.

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MONIQUE, MARK
- (THOMAS) VOL 1

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01 A. Uh-huh.

02 Q. And see if we can help you
03 remember the relationship between the
04 Los Angeles facility and the salesperson.

05 A. Okay.

06 Q. Page 30 of that deposition,
07 line nine through 10, you're asked the
08 question, "And what type of facility was
09 Los Angeles." And here we're talking about
10 the Los Angeles Savogran facility.

11 A. Right.

12 Q. So the question was, "And what
13 type of facility was Los Angeles?" And your
14 answer was, "That was a very small
15 manufacturing facility and it wasn't -- like
16 I said, it wasn't actually owned by
17 Savogran. It was owned by one of the -- it
18 was like a West Coast sales guy that owned
19 it." Do you see that?

20 A. Yes.

21 Q. Does that help you recall that
22 it was a west coast salesperson that owned
23 the Los Angeles facility?

24 A. Yeah. Like I said, I'm not

Transcript of Monique, Mark

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01 sure specifically -- you know, the west
02 coast sales guy, I'm not sure what the
03 relationship was.

04 Q. All right.

05 A. Yep.

06 Q. Do you think that answer in
07 2016 was incorrect?

08 A. It could have been.

09 Q. And was there a -- a breakdown
10 in -- strike that.

11 Do you know when the Los
12 Angeles facility came into existence?

13 A. I don't.

14 Q. Do you know what the role of
15 the Los Angeles facility was?

16 A. Yes.

17 Q. What was that?

18 A. Generally they were, you know,
19 selling Savogran products on the west coast.

20 Q. And we have some documents
21 we're going to look at to explore that
22 relationship a little bit more. But first I
23 want to give kind of a broader overview of
24 the company.

Savogran
objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence and calls for speculation.

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MONIQUE, MARK
- (THOMAS) VOL 1

Transcript of Monique, Mark

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01 So, at least by 1950, Savogran
02 had a manufacturing facility in Norwood,
03 Massachusetts and a manufacturing facility
04 in Addison, Illinois; is that right?

05 A. Yes.

06 Q. And what part of the country
07 did the Norwood, Massachusetts facility
08 manufacture product for sale in?

09 MR. LEDGER: For what time
10 period?

11 BY MR. DuPONT:

12 Q. Well, let's -- let's back up.
13 Did Savogran continue to manufacture product
14 at both the Norwood, Massachusetts and
15 Addison, Illinois facility during the 1960s
16 and 1970s?

17 A. I don't know specifically when
18 Addison came online.

19 Q. We looked at Exhibit 1 --

20 A. Right.

21 Q. -- the second page of that.
22 And it refers to Addison -- an Addison
23 Savogran facility on September 15, 1950. Do
24 you see that?

Savogran
objects to this
designation on
the grounds that
it is vague and
ambiguous, not
relevant, lacks
foundation,
assumes facts not
in evidence and
calls for
speculation.

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01 A. Yes.

02 Q. All right. Does that help you
03 remember that the Addison facility was at
04 least in place by 1950?

05 A. Again, I don't -- I can't tell
06 you specifically when they -- when they
07 started there. It's certainly on the -- on
08 the price list, but I have no idea what was
09 going on there.

10 Q. The Addison facility was a
11 manufacturing facility; right?

12 A. When I started in '87 it was,
13 yes.

14 Q. Are you aware of the Addison
15 facility being used for anything besides
16 manufacturing?

17 A. No.

18 Q. And as we look through these
19 price lists that are marked as Exhibit 1, we
20 see reference to an Addison Savogran
21 facility in 1955, which is on Bates Number
22 5.

23 In 1960, which is Bates Number
24 6.

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence and calls for speculation.

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MONIQUE, MARK
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01 In 1965, which is Bates Number
02 10.
03 In 1967, which is Bates Number
04 12.
05 In 1968, which is Bates Number
06 13.
07 In 1969, which is Bates Number
08 14.
09 In 1971, which is Bates Number
10 15.
11 In 1972, which is Bates Number
12 16.
13 In 1973, which is Bates Number
14 17.
15 In 1974, which is Bates Number
16 18.
17 And in 1976, which is Bates
18 Number 19 -- excuse me. It's not on -- it's
19 not on page 19. So let's stop with 1974.
20 So from at least 1950 through
21 1974, there's reference to a Savogran
22 Addison, Illinois facility; is that correct?
23 A. Yes.
24 Q. And do you know whether

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence and calls for speculation.

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MONIQUE, MARK
- (THOMAS) VOL 1

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01 Savogran was manufacturing product at the
02 Addison, Illinois facility between 1950 and
03 1974?

04 A. I don't.

05 Q. Do you know when it was
06 Savogran began to manufacture product at the
07 Addison, Illinois facility?

08 A. No.

09 Q. We'll be able to get some
10 answers from some documents later on in your
11 testimony. Was the Kutzit a product that
12 was manufactured at the Addison, Illinois
13 facility?

14 A. When I started in 1987 it was.

15 Q. And was the Kutzit product a
16 product that was manufactured in Norwood?

17 A. Yes.

18 Q. In the 1960s and 1970s, for
19 Kutzit product that was sold in California,
20 do you know where that was manufactured?

21 A. I don't.

22 Q. You can say with certainty
23 that Savogran manufactured Kutzit product at
24 the Norwood, Massachusetts facility in the

Savogran objects
to this designation
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speculation.

MONIQUE, MARK
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01 1960s and 1970s; is that fair?

02 A. Definitely the seventies, yep.

03 Yes.

04 Q. In the 1960s, where did
05 Savogran manufacture Kutzit product?

06 A. I'm not sure.

07 Q. In addition to the United
08 States, has Savogran also sold product in
09 the Caribbean?

10 A. Yes.

11 Q. In the 1950s through the
12 1970s, was the Kutzit product sold through
13 distributors?

14 A. I have no direct knowledge of
15 that. Yeah.

16 Q. Was the Kutzit product sold by
17 small paint distributing companies in the
18 1950s through 1970s?

19 A. Again, no -- no direct
20 information.

21 Q. Do you recall testifying in
22 2016 that the Kutzit product was sold
23 through distributors in the 1950s through
24 1970s?

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence and calls for speculation.

MONIQUE, MARK
- (THOMAS) VOL 1

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01 A. I don't.

02 Q. Would you agree with me that
03 stores that sold paint related products and
04 solvent related products were the type of
05 stores that you would expect to find
06 Savogran products being sold in during the
07 1950s through 1970s?

08 A. Yes.

09 Q. And you've had the opportunity
10 to learn about Savogran's history prior to
11 1987 from records that you've reviewed?

12 A. Generally. There's not a lot
13 of records to -- to review.

14 Q. You've also spoken with
15 employees who worked at Savogran before you,
16 including a gentleman named Tom Little?

17 A. Yes.

18 Q. And Tom Little began to work
19 for Savogran in 1972?

20 A. Yes.

21 Q. And you've spoken with other
22 individuals at Savogran to learn about its
23 history, including a John Gale and a Steve
24 McLean?

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence, calls for speculation, is inadmissible hearsay, calls for an expert opinion and is an incomplete hypothetical.

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MONIQUE, MARK
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01 A. Yes.
02 Q. The -- I want to talk to you
03 some more about the Kutzit product.

04 A. All right.

05 Q. We know from Exhibit 1 that
06 the Kutzit product was a product being
07 manufactured and sold by Savogran by 1949;
08 correct?

09 A. Yes.

10 Q. And by 1963, is it your
11 understanding that the Kutzit product was
12 using benzene as an ingredient in the
13 product?

14 A. I'm not sure.

15 Q. I hand to you a document I'm
16 marking as Exhibit 2 to your deposition.

17 - - -

18 (Whereupon the document was
19 marked, for identification purposes,
20 as Monique Exhibit Numbers 2 and 3.)

21 - - -

22 BY MR. DuPONT:

23 Q. Exhibit 2, is that a -- a
24 blend sheet for the Savogran product --

Savogran objects to this designation on the grounds that it is vague and ambiguous, not relevant, lacks foundation, assumes facts not in evidence, calls for speculation, is inadmissible hearsay, calls for an expert opinion and is an incomplete hypothetical.

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MONIQUE, MARK
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01 strike that.

02 Is Exhibit 2 a blend sheet for
03 the Savogran Kutzit product?

04 A. Yes.

05 Q. And does Exhibit 2 indicate
06 that benzene, or benzol, as the term is
07 there, is an ingredient in the Kutzit
08 product as of May 10, 1963?

09 A. Yes.

10 Q. And what is your understanding
11 of what the benzol was?

12 A. A solvent.

13 Q. And is benzol a synonym for
14 benzene?

15 A. Yes.

16 Q. So, looking at this blend
17 sheet -- incidentally, a blend sheet is
18 basically instructions for how to
19 manufacture the product?

20 A. It's the formula, you know --
21 you could see that, you know, Kutzit was a
22 very thin product. It didn't have any
23 viscosity. You know, it was not like a
24 waffle or a pancake mix. And it also had a

Savogran objects to this designation on the grounds that it is not relevant, lacks foundation, vague and ambiguous, and calls for an expert opinion.



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01 little bit of dye in it, which made it blue.

02 So it wasn't clear product.

03 MR. DuPONT: Well, I'll move

04 to strike the nonresponsive portion

05 of the answer.

06 BY MR. DuPONT:

07 Q. The blend sheet were
08 instructions to the manufacturing facility
09 as to how to make the product using the
10 product formula; is that fair?

11 A. Yes.

12 Q. And one of the instructions
13 given to the Savogran manufacturing facility
14 as to how to make the Kutzit product was to
15 use benzol as an ingredient; right?

16 A. Yes.

17 Q. And in this blend sheet there
18 are the ingredients listed and the number of
19 gallons of each ingredient to put into the
20 product; is that fair?

21 A. Yes.

22 Q. And the benzol ingredient in
23 the Kutzit product, as we've discussed in
24 the past, was in the range of 50 to

Savogran objects to this designation on the grounds that it is vague and ambiguous as to which blend sheet, lacks foundation, calls for speculation, witness lacks personal knowledge and the document speaks for itself.

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01 55 percent of the Kutzit product?

02 A. Yes.

03 Q. And by looking through
04 formulas in the past, and advertisements for
05 the product Kutzit in the past, is it your
06 understanding that Kutzit had benzene as an
07 ingredient in it in that range of 50 to
08 55 percent from at least May 10, 1963 until
09 some point in time around 1962 or 1973?

10 A. You said 1962 or 1973.

11 Q. Thank you. I'm tired.

12 Based on your review of
13 Savogran's historic formulas and marketing
14 materials for the Kutzit product, it's your
15 understanding that the Kutzit product had
16 benzene as an ingredient at a percentage of
17 50 to 55 percent from at least May 10, 1963
18 until some time around 1972 or 1973?

19 A. I wouldn't say May 10th
20 specifically. I would say some time, you
21 know, post -- you know, late in '63 most
22 likely.

23 Q. And why do you say some time
24 late in 1963?

Savogran objects to this designation on the grounds that it is vague and ambiguous as to which blend sheet, lacks foundation, calls for speculation, witness lacks personal knowledge and the document speaks for itself.



MONIQUE, MARK
- (THOMAS) VOL 1

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01 A. Well, just because the formula
02 is dated May 10th, '63 doesn't necessarily
03 mean it was put into production on that day.

04 Q. Now, we've discussed in the
05 past that there is an earlier version of a
06 formula for the Kutzit product, and that
07 that is from October 2 of 1956. Is that
08 correct?

09 A. Yes.

10 Q. And that version of the
11 formula does not list benzene as an
12 ingredient on October 2 of 1956; is that
13 right?

14 A. Yes.

15 Q. And in the past what you've
16 told me was that you didn't know if that was
17 a formula that was actually used by
18 Savogran. Do you remember that?

19 A. Yes.

20 Q. And I think you had told me
21 that it was your understanding that
22 methylene chloride was an ingredient that
23 was used instead of benzene before 1963.

24 A. No, that was after 1973.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge and the document speaks for itself.

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MONIQUE, MARK
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01 Q. Okay. Methylene chloride was
02 not used as an ingredient in the Kutzit
03 product before 1963?

04 A. I don't know.

05 Q. In the past, when we discussed
06 the history of the Kutzit product, you were
07 not certain as to when, between 1956 and
08 1963, benzene started to be used as an
09 ingredient. Do you remember that?

10 A. Yes.

11 Q. All right. Are you still
12 uncertain as to when exactly between 1963 --
13 excuse me, strike that.

14 Do you agree that it's
15 possible that benzene was used as an
16 ingredient in the Kutzit product before
17 1963?

18 MR. LEDGER: Objection, calls
19 for speculation.

20 THE WITNESS: The record
21 doesn't show that.

22 By MR. DuPONT:

23 Q. Does the record show when
24 exactly Savogran began to use benzene as an

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and witness lacks personal knowledge.

MONIQUE, MARK
- (THOMAS) VOL 1

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01 ingredient in the Kutzit?

02 A. Yes.

03 Q. And when is that?

04 A. Look at the -- look at -- pull
05 up the labels that you have.

06 Q. So you would refer to one of
07 the labels on the Kutzit product --

08 A. Yes.

09 Q. -- as an indication of when
10 benzene was first used as an ingredient in
11 the product?

12 A. Yes.

13 Q. And would that be the
14 November 19, 1963 version of the label?

15 A. Is that the earliest one you
16 have?

17 Q. Let's look at that for a
18 moment. I've handed you the November 1963
19 version of the Kutzit label; is that
20 correct?

21 A. Yes.

22 Q. And it's November 19, 1963?

23 A. Yes.

24 Q. All right. And that's a

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and witness lacks personal knowledge.

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MONIQUE, MARK
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01 document that you would look at and say that
02 benzene for sure was being used as an
03 ingredient in the Kutzit product by this
04 period of time?

05 A. Some time after that, yes.

06 Q. Looking back at Exhibit 2, the
07 blend sheet for the Kutzit product in May 10
08 of 1963, nothing on this document says that
09 this is a new formula for Kutzit; correct?

10 MR. LEDGER: I object. The
11 document speaks for itself.

12 THE WITNESS: There is nothing
13 on it that says new, yeah.

14 BY MR. DuPONT:

15 Q. All right. And this is in the
16 format of a -- of a batch ticket, the
17 instructions to the manufacturing facility
18 as to how to actually make the Kutzit
19 product; correct?

20 A. It's a formula.

21 Q. And the formula is on a -- on
22 a what you would call a batch ticket or
23 batch card, which are the instructions to
24 the manufacturing facility?

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and witness lacks personal knowledge.

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MONIQUE, MARK
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01 A. I don't know if I'd call it a
02 batch card. It was a formula.

03 Q. And, at some point in time,
04 Savogran decided to remove the benzene as an
05 ingredient from the Kutzit and replace it
06 with methylene chloride?

07 A. Yes.

08 Q. And was the methylene chloride
09 a better chemical for a paint remover? In
10 other words, did it do a better job of
11 removing paint?

12 MR. LEDGER: Object. It's
13 calling for speculation.

14 THE WITNESS: I've never
15 compared the -- the -- this 1963
16 formula to the -- to the methylene
17 chloride formula.

18 BY MR. DuPONT:

19 Q. Methylene chloride is a
20 smaller molecule than benzene?

21 A. Yes.

22 Q. And since methylene is a
23 smaller molecule than benzene, it can
24 penetrate the paint, or other coating,

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, and witness lacks personal knowledge.

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Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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MONIQUE, MARK
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01 better than benzene?

02 MR. LEDGER: Object, calls for
03 speculation. Incomplete
04 hypothetical.

05 If you know.

06 THE WITNESS: I don't know.

07 Like I said, I've never tested that
08 formula.

09 BY MR. DuPONT:

10 Q. Sir, do you remember, when you
11 gave your deposition in 2016, telling me
12 that the methylene chloride was a better
13 paint remover than benzene because it was a
14 smaller molecule and it could penetrate
15 better?

16 A. I don't.

17 Q. Would you take a look at page
18 46 to your deposition from 2016, please?

19 A. (Complying with request.)

20 Q. Page 46, lines four to five,
21 in 2016 you're asked the question: "What was
22 used instead of benzene before 1963 in
23 Kutzit?" Do you see that?

24 A. Uh-huh. Yes, sorry.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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01 Q. And would you read what your
02 answer was, please?

03 A. So starting on line six?

04 Q. Correct.

05 A. "Methylene chloride is the
06 difference in the -- methylene chloride and
07 toluene are the difference. But we'd have
08 to know what the solvent PM 4088 is on the
09 May 1963 formula, which, if you took a look
10 at the label that corresponds to this 1963
11 label, then we can figure out what the
12 ingredients were and then compare it to the
13 formula here."

14 Q. So part of your answer in 2016
15 was that before 1963 methylene chloride was
16 being used instead of benzene?

17 A. No.

18 Q. Okay. So, when you're asked
19 the question, what was used instead of
20 benzene before 1963 in Kutzit, your answer
21 was, "Methylene chloride is the difference
22 in the -- methylene chloride and toluene are
23 the difference;" is that what you're saying?

24 A. No. I don't know what I was

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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01 saying. That doesn't make any sense.

02 Q. Okay. The next question
03 you're asked in 2016 is, "Was methylene
04 chloride an effective substitute for benzene
05 in the paint remover product?" And what was
06 your answer at that time?

07 A. On line 18?

08 Q. Correct.

09 A. "It was a much more effective
10 replacement for benzene."

11 Q. And then the next question
12 you're asked is, "So methylene chloride
13 actually worked a lot better than benzene
14 for paint removing?" And your answer was?

15 A. "I've never actually worked
16 with a benzene remover, so I guess wouldn't
17 be qualified to say that."

18 Q. And the next question you're
19 asked on page 47, line two, was: "Based on
20 your understanding of the chemical
21 properties of benzene and methylene chloride
22 as a chemist, what makes methylene chloride
23 a much better substitute for paint remover
24 products than benzene?" And what was your

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, misstates testimony, the witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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01 answer?

02 A. "It's a real small molecule.

03 So it has a real good ability to diffuse
04 through the paint film."

05 Q. And the next question you were
06 asked was: "And why is that important for
07 paint removers?"

08 A. "Well, it gets through the --
09 it gets through the paint film and releases
10 the bond between the paint and the
11 substrate."

12 Q. And, again, with reference to
13 methylene chloride, you were asked the
14 question: "And that helps the product work
15 better in removing paint?" And your answer
16 was?

17 A. "Correct."

18 Q. So, in 2016, what you told us
19 was that the methylene chloride was a real
20 small molecule, which gave it a good ability
21 to diffuse through the paint film. And that
22 made it a much more effective replacement
23 for benzene?

24 MR. LEDGER: Object. It's

Savogran objects to this designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, misstates testimony, the witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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MONIQUE, MARK
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01 misstating his testimony.

02 BY MR. DuPONT:

03 Q. Is that correct?

04 A. No. I mean, you're -- you're
05 kind summarizing things there.

06 Q. Right.

07 A. You know.

08 Q. All right. Well, you
09 certainly said that methylene chloride was a
10 real small molecule; that it has a real good
11 ability to diffuse through the paint film;
12 and that -- that allows the methylene
13 chloride to get through the paint film and
14 releases the bond between the paint and
15 substrate; right?

16 A. Yes.

17 Q. All right. And when you were
18 asked the question whether methylene
19 chloride was an effective substitute for
20 benzene in the paint remover product, your
21 answer was that it was a much more effective
22 replacement for benzene; right?

23 A. Right.

24 Q. Now, in 1973, we see for the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

MONIQUE, MARK
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01 first time that there is a formula of the
02 Kutzit product that lists methylene chloride
03 instead of benzene. I have marked that as
04 Exhibit 4.

05 - - -
06 (Whereupon the document was
07 marked, for identification purposes,
08 as Monique Exhibit Number 4.)

09 - - -

10 BY MR. DuPONT:

11 Q. Do you see that?

12 A. Yes.

13 Q. And when we've spoken about
14 this formula in the past, what you told me
15 was that you did not know how long after
16 November 16, 1973 this formula went into
17 production?

18 A. Yeah, I don't remember that.

19 Q. Would you turn to page 56 of
20 your deposition?

21 A. Absolutely.

22 Q. You're asked the question, at
23 line 17: "So this formula is dated
24 November 16, 1973, that has methylene

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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01 chloride in it; right?"

02 And your answer was, "Yes."

03 Is that correct?

04 A. Yes.

05 Q. And you were then asked the
06 question: "And it's referred to as the new
07 Kutzit; right?"

08 A. Yes.

09 Q. Indeed, if we look at Exhibit
10 4, the November 16, 1973 formula for Kutzit
11 says, "New Kutzit" at the top; right?

12 A. Yes.

13 Q. Then the next question you
14 were asked, at line 24, is, "So that's when
15 this formula presumably was written,"
16 meaning November 16, 1973. And then the
17 question, "Do you know when the formula was
18 actually first used after November 16, 1973
19 to manufacture Kutzit?"

20 And your answer at that time
21 in 2016 was, "No." Is that correct?

22 A. Yes.

23 Q. Is it still your testimony
24 today that you don't know when, after

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

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01 November 16, 1973, this formula on Exhibit 4
02 with methylene chloride instead of benzene
03 was first actually manufactured?

04 A. Correct.

05 Q. In the 1960s, did the label
06 for the Kutzit product have the colors,
07 blue, white and orange on it?

08 A. I'm not sure.

09 Q. In the 1970s, did the labels
10 for the Kutzit product have the colors red,
11 white and blue on it?

12 A. Not sure.

13 Q. We could look at the proofs
14 for the Kutzit labels and find information
15 about what colors were on them?

16 A. Yes.

17 Q. I'm going to mark a proof for
18 a Kutzit label as Exhibit 5. And that's
19 Bates Number Lee-Savogran 71.

20 - - -

21 (Whereupon the document was
22 marked, for identification purposes,
23 as Monique Exhibit Number 5.)

24 - - -

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, witness lacks personal knowledge, calls for an expert opinion and an incomplete hypothetical.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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01 BY MR. DuPONT:

02 Q. And on this proof -- and when
03 we say proof for a label, is this basically
04 the copy of the label that was exchanged
05 between Savogran and the company that
06 printed the label for it?

07 A. Yes.

08 Q. And at the bottom left-hand
09 corner of this proof of the Kutzit label,
10 you see that there's some notes there?

11 A. Yes.

12 Q. And in those notes there's a
13 category for colors, where it's written blue
14 and orange?

15 A. Yes.

16 Q. And this proof is dated
17 November 19, 1963?

18 A. Yes.

19 Q. So that's an indication to you
20 that there was blue and orange on the label
21 of the Kutzit product in the 1960s?

22 A. Yes.

23 - - -

24 (Whereupon the document was

Savogran
objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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- (THOMAS) VOL 1

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01 marked, for identification purposes,

02 as Monique Exhibit Number 6.)

03 - - -

04 BY MR. DuPONT:

05 Q. I'm going to hand to you
06 Exhibit 6 to your deposition, which is Bates
07 Number Lee-Savogran 72.

08 Is Exhibit 6 to your
09 deposition also a proof for a Kutzit label,
10 dated February 14, 1969?

11 A. Yes.

12 Q. And that proof also has notes
13 indicating that there was white, orange and
14 blue on the label of the Kutzit product in
15 1969?

16 A. Yes.

17 Q. So, from looking at these two
18 labels we can tell that between 1963 and
19 1969 the color scheme for the Kutzit label
20 included orange, blue and white?

21 A. Yes.

22

23

24

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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MONIQUE, MARK
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01 - - -
02 (Whereupon the document was
03 marked, for identification purposes,
04 as Monique Exhibit Number 7.)
05 - - -

06 BY MR. DUPONT:

07 Q. I'm going to hand to you
08 Exhibit 7 to your deposition. Is Exhibit 7
09 a August 27, 1973 version of the Kutzit
10 label?

11 A. Yes.

12 Q. At least it's the proof from
13 August 27, 1973?

14 A. Yes.

15 Q. All right. And you've
16 actually in the past read through this label
17 and indicated that it was a white background
18 with red and blue on the label?

19 A. Yes.

20 Q. And you've drawn -- that's
21 your handwriting on this document, where
22 there's a horse on the label that's outlined
23 with writing and at the top it's written
24 "Red"?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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01 A. Yes.

02 Q. And that corresponds to the
03 back panel of the Kutzit?

04 A. Yes.

05 Q. So the back panel had red on
06 it?

07 A. I'm not sure at this point,
08 sitting here today.

09 Q. All right.

10 A. Yeah.

11 Q. On the front of the label --
12 back in 2016, you looked at this exhibit and
13 you bracketed a portion of the label on the
14 front of the product and wrote "Blue"?

15 A. Yes.

16 Q. That was to indicate that that
17 portion of the label had blue on it?

18 A. Yes.

19 Q. And below that portion of the
20 label you bracketed an area and wrote "Red"
21 next to it?

22 A. Yes.

23 Q. And that was to indicate that
24 the writing in that area of the front of the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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01 label was in red?

02 A. Yes.

03 Q. Now, has your understanding of
04 the color scheme of the Kutzit product in
05 the 1970s changed, or is it still your
06 understanding that it was a red, white and
07 blue color scheme in the 1970s?

08 A. Just going based on what's
09 written here with the white, red and the
10 blue.

11 Q. So it's still your
12 understanding, in the 1970s, the product had
13 a red, white and blue color scheme?

14 A. Yes.

15 Q. And that in the 1960s, at
16 least between '63 and '69, it had an orange,
17 blue and white color scheme?

18 A. Yes. That's what the record
19 shows.

20 Q. And Savogran has been the one
21 that was responsible for preparing the
22 actual language on the Kutzit label;
23 correct?

24 A. Uh-huh.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

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Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and an incomplete hypothetical.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge.

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01 MR. LEDGER: Object.

02 Vague as to time. Are you referring

03 to the sixties?

04 BY MR. DuPONT:

05 Q. Sir, during the 1960s and the

06 1970s, it was Savogran that prepared the

07 language on the label of the Kutzit

08 products?

09 MR. LEDGER: Object. It's

10 calling for speculation. If you

11 know.

12 THE WITNESS: I don't know.

13 BY MR. DuPONT:

14 Q. In the 1970s, was it Savogran

15 that prepared the language on the label for

16 the Kutzit product?

17 MR. LEDGER: Object. It's

18 calling for speculation.

19 THE WITNESS: I don't know.

20 BY MR. DuPONT:

21 Q. Let's see if I could turn your

22 attention to page 68 of your deposition from

23 2016.

24 A. What page?

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01 Q. Page 68, please.

02 On page 68 you were asked the
03 question, on line 22, "Who at The Savogran
04 Company, during the 1960s and 1970s, was
05 responsible for preparing label language?"

06 And your answer was, "I'm not
07 certain."

08 A. No.

09 Q. Excuse me. Your answer was,
10 "I'm not sure."

11 A. Correct.

12 Q. Okay. Then, if we could turn
13 to page 70.

14 A. (Complying with request.)

15 Q. All right. So -- strike that.

16 So, what you're saying here
17 today is, you just don't know who actually
18 prepared the language on the label of the
19 Kutzit product during the 1960s and 1970s?

20 A. Yes.

21 Q. Do you have any information to
22 suggest that it was any person not employed
23 by Kutzit, or any company separate from
24 Kutzit that prepared the language on the

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01 label for the Kutzit product?

02 A. Kutzit is not a company.

03 Q. Correct. Let me re-ask the
04 question because perhaps I didn't ask it
05 clearly.

06 Do you have any information to
07 suggest that a person or company other than
08 Savogran prepared the language -- actually
09 determined what language would go on the
10 label of the Kutzit product during the 1960s
11 and 1970s?

12 A. No knowledge of that.

13 Q. Did Savogran have any
14 industrial hygienists that worked for it in
15 the 1960s and 1970s?

16 A. I don't know.

17 Q. Did Savogran have any
18 toxicologists that worked for it in the
19 1960s and 1970s?

20 A. Don't know.

21 Q. Did Savogran have anybody
22 qualified in the area of occupational health
23 or occupational medicine in the 1960s and
24 1970s?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge.

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01 A. Don't know.

02 Q. Did Savogran consult with any
03 professionals that were not employed by it
04 who were qualified in the areas of
05 industrial hygiene, toxicology, occupational
06 health, in the context of preparing product
07 labels?

08 A. Don't know.

09 Q. What's your understanding of
10 what the process for manufacturing the
11 Kutzit product was in the 1960s and 1970s?

12 A. I don't know.

13 Q. Did the Norwood, Massachusetts
14 facility have storage tanks for storing
15 chemicals used in the process of blending
16 the Kutzit product in the 1960s and 1970s?

17 A. I'm not sure.

18 Q. What's your understanding of
19 how Savogran received chemical ingredients
20 used in the Kutzit product during the 1960s
21 and 1970s?

22 A. Not sure.

23 Q. How did Savogran manufacture
24 the Kutzit product in 1987, when you began

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01 with the company?

02 A. So it's -- when I started with
03 the company -- excuse me -- the main
04 ingredients, the acetone, the methanol, the
05 toluene, the methylene chloride, came in
06 tank wagons. And the material -- the raw
07 materials were loaded into underground
08 storage tanks.

09 And then the products, you
10 know, the individual raw materials are, you
11 know, pumped out of the underground storage
12 tank and into mixing kettles.

13 The wax gets melted and the
14 solvents get blended together. The dye gets
15 added to make it blue. And then it gets
16 pumped over to a holding kettle, where it
17 then gets put into the smaller containers,
18 packaged.

19 Q. And is it your understanding
20 that the Kutzit product, when it contained
21 benzene as an ingredient, was manufactured
22 both at Savogran's Norwood, Massachusetts
23 facility and its Illinois facility?

24 A. No, I don't know specifically.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge.

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01 Q. Would you do me a favor and
02 take a look at page 72 of your deposition --

03 A. Okay.

04 Q. -- from 2016?

05 A. Yep.

06 Q. In 2016 you were asked the
07 question, "Is it your understanding though
08 that the Kutzit with benzene in it, as an
09 ingredient, was manufactured both at
10 Savogran's Norwood, Massachusetts facility
11 as well as at its Illinois facility?"

12 And your answer was, "Yes."

13 A. Yes. Uh-huh.

14 Q. Now, does that help you recall
15 that the Kutzit with benzene as an
16 ingredient was manufactured both at the
17 Norwood, Massachusetts Savogran facility and
18 Savogran's Illinois facility?

19 A. Yes.

20 Q. Now, in the 1960s and 1970s,
21 was there a breakdown geographically of
22 which products -- which -- strike that.

23 In the 1960s and 1970s, did
24 Savogran's Norwood, Massachusetts facility

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge.

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01 service certain geographic areas and its

02 Illinois facility service others?

03 A. I'm not sure.

04 MR. LEDGER: What time is it?

05 MR. DuPONT: It is twelve

06 o'clock.

07 MR. LEDGER: Let's break.

08 MR. DuPONT: That's great.

09 VIDEO TECHNICIAN: The time is

10 12:00. We're off the record.

11 (Whereupon there was a recess

12 in the proceeding.)

13 VIDEO TECHNICIAN: This is the

14 beginning of media unit two. We're

15 back on the record. The time is

16 12:37 p.m.

17 BY MR. DuPONT:

18 Q. Sir, before we took a break

19 for lunch I was asking you about your

20 understanding of how the Kutzit product was

21 manufactured, at least based on your time

22 working at Savogran. And I believe you had

23 indicated that there were underground

24 storage tanks that were at the Norwood,

Savogran objects
to the designation
on the grounds
that it is vague and
ambiguous, lacks
foundation, calls
for speculation,
the witness lacks
personal
knowledge and
calls for an expert
opinion.

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01 Massachusetts facility that received
02 ingredients of the product that came in --
03 was it tank wagons, the term that you used?

04 A. Yes.

05 Q. All right. Are tank wagons
06 the type of truck with a tank on the back of
07 it?

08 A. Correct.

09 Q. And the ingredients were
10 stored in the underground storage tank and
11 then they were transferred to mixing tanks?

12 A. Yes.

13 Q. And then from the mixing
14 tanks, that's where the ingredients of the
15 Kutzit product were blended?

16 A. Yes.

17 Q. And then, once blended, the
18 Kutzit product was transferred -- that blend
19 was transferred to holding kettles?

20 A. A holding kettle.

21 Q. A holding kettle?

22 A. Yes.

23 Q. And during this process there
24 was wax added to the Kutzit product?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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MONIQUE, MARK
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01 A. Yes.

02 Q. Okay. And the purpose of the
03 wax was to give the -- give the product a
04 property so that the solvent ingredients,
05 such as benzene, stayed on the surface of
06 the product while it was working into the
07 paint and removing the paint?

08 MR. LEDGER: Object. This
09 calls for speculation. Calls for
10 expert opinion.

11 THE WITNESS: Simpler -- more
12 simply, it just retards evaporation.

13 BY MR. DuPONT:

14 Q. Okay. It slows evaporation?

15 A. Right, right.

16 Q. And the reason it wants to do
17 that is to keep the solvent on the surface
18 to eat away at the -- at the paint?

19 MR. LEDGER: Object. Calls
20 for speculation. If you know.

21 THE WITNESS: Yes.

22 BY MR. DuPONT.

23 Q. Even though the process for
24 the evaporation is slowed down, the solvent

Savogran
objects to the
designation on
the grounds that
it is vague and
ambiguous,
lacks
foundation, calls
for speculation,
the witness lacks
personal
knowledge and
calls for an
expert opinion.

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01 ingredients of the Kutzit product are still
02 evaporating off the product?

03 A. Yes.

04 Q. And you know, from your
05 experience as a chemist, that benzene itself
06 has a very fast evaporation rate?

07 MR. LEDGER: I'll object.

08 Vague and ambiguous as to fast.

09 THE WITNESS: I actually don't
10 know the evaporation rate of benzene.
11 I can't say I really know.

12 BY MR. DuPONT:

13 Q. Okay. Now, when we spoke
14 before you had indicated to me that when it
15 comes to storing ingredients in the
16 underground storage tanks for the Savogran
17 products, it was the practice of Savogran to
18 use up all the ingredients in a particular
19 tank so to deplete that tank before ordering
20 a new shipment of -- or receiving a new
21 shipment of ingredient; is that correct?

22 A. Well, they would run --
23 normally run the tank down because it only
24 has so much storage capacity before you

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 purchase more.

02 Q. All right.

03 A. Yeah, uh-huh.

04 Q. So when we met the last time,
05 back in 2016, we had -- I asked you
06 questions about suppliers to Savogran, and
07 you had information about some periods of
08 time, but not others. And we didn't have
09 some of Savogran's records available during
10 that deposition. Do you remember that?

11 A. Vaguely.

12 Q. Okay. So, I'll refer you to
13 your -- first of all, I'll refer you to the
14 -- some documents that were produced to us
15 by Savogran in this case under a March 11,
16 2019 letter from your counsel. And they
17 have Bates Number 123 through 126 on them.

18 I'll mark the cover letter
19 with -- the Bates numbered document as
20 Exhibit 8 to your deposition.

21 - - -

22 (Whereupon the document was
23 marked, for identification purposes,
24 as Monique Exhibit Number 8.)

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01

- - -

02 BY MR. DuPONT:

03 Q. And I'd like you to take a
04 minute to look at the pages 123 through 126,
05 and then I'll have some questions for you
06 about them. Okay?

07 A. Okay.

08 MS. BONNEVILLE: Andrew, can
09 you repeat the Bates numbers, please?

10 MR. DuPONT: 123 through 126.

11 MS. BONNEVILLE: Thank you.

12 BY MR. DuPONT:

13 Q. All right. So, we're looking
14 at Exhibit 8 and, in particular, the
15 document Bates Numbered 123 through 126.
16 Can you identify for us what those documents
17 are?

18 A. Those are some old purchase
19 records that we found for the Norwood, Mass.
20 location.

21 Q. Who found these?

22 A. Oh, I did.

23 Q. How did you find them?

24 A. They were in the corner of the

Savogran
objects to the
designation on
the grounds that
it is vague and
ambiguous,
lacks
foundation, calls
for speculation
and the witness
lacks personal
knowledge.

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01 warehouse, you know.

02 Q. What were they in?

03 A. They were in a metal storage
04 container.

05 Q. When did you find them; do you
06 remember?

07 A. I don't. I don't.

08 Q. Okay. So I'll represent to
09 you that when I took your deposition in July
10 of 2016 we did not have these records
11 produced to us yet.

12 A. Okay.

13 Q. And then on March 21 of 2017,
14 a copy of these records were sent to my
15 office in another case, the case of the
16 Estate of Jack Edgar Lee. Okay?

17 A. Okay.

18 Q. So, does that help you
19 remember that it was at some time between
20 July of 2016 and March of 2017 that you
21 located the records that are marked as
22 Exhibit 8?

23 A. Not really.

24 Q. Okay.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

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01 A. I'm sorry.

02 Q. All right.

03 A. Yeah.

04 Q. Fair enough.

05 A. But we did find them.

06 Q. So, was there somebody else
07 who participated in searching for -- in
08 conducting the search that led to the
09 records of Exhibit 8?

10 A. There wasn't a search. We
11 just came across them. Yeah.

12 Q. Okay.

13 A. Yeah.

14 Q. So, there wasn't an active
15 search, you just happened to come across
16 them?

17 A. Absolutely.

18 Q. Great. And that was in a
19 metal storage container?

20 A. Yes.

21 Q. In the corner of the Norwood,
22 Massachusetts warehouse?

23 A. Yes.

24 Q. Why were you looking in that

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01 container?

02 A. I wasn't necessarily looking
03 in it, but it was -- it looked like
04 something I had seen before, when I first
05 started working there, from the -- there's
06 was a woman that since passed away. We'll
07 get that question out of the way. Helen
08 Kowalski, that sat at the front of the
09 office in Norwood that would do the ordering
10 for John Gale. And I recognized it as a
11 filing cabinet that used to sit next to her
12 desk.

13 Q. Okay. So, when you started
14 working for The Savogran Company there was a
15 filing cabinet that was next to Ms. Helen
16 Kowalski's desk?

17 A. Correct.

18 Q. And Ms. Kowalski had the
19 responsibility of ordering product under the
20 direction of John Gale?

21 A. Yes.

22 Q. And John Gale was your boss
23 when you started at The Savogran Company?

24 A. Yes.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

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01 Q. And he was the gentleman that
02 had the relationship with -- is it Mr. Fish
03 from Ashland?

04 A. Yes.

05 Q. Who was the salesperson for
06 Ashland?

07 A. Yes.

08 Q. All right. And so you
09 recognized that the cabinet that was in the
10 corner of the warehouse was the same cabinet
11 that was next to Ms. Kowalski's desk?

12 A. Yes.

13 Q. And so you decided to look
14 through it?

15 A. Absolutely.

16 Q. And what did you find in that
17 cabinet?

18 A. These documents.

19 Q. How were they kept? Were they
20 in a book; were they individual pages?

21 A. No, they were big cards.
22 Probably something like that (indicating).

23 Q. Okay. Now, when you said,
24 "like that," I can see it and the video can

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

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01 see, but describe with your words what the
02 dimensions were --

03 A. Probably two by two.

04 Q. Two foot by two foot cards?

05 A. Yeah, yes.

06 Q. And did you -- did Savogran
07 provide us with copies of all the cards that
08 you found or only certain ones?

09 A. No. I mean, it had the card
10 in there on stuff like making the tile grout
11 and making like TSP cleaner. Just, you
12 know, stuff that wasn't germane to any of
13 this.

14 Q. Okay.

15 A. You got all the stuff that was
16 germane to what we've been discussing.

17 (Discussion held off the
18 record.)

19 BY MR. DuPONT:

20 Q. So, in this filing cabinet you
21 found cards that related to -- some of which
22 related to the Kutzit product, some of which
23 related to other products?

24 A. Correct.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge and calls for expert opinion.

MONIQUE, MARK
- (THOMAS) VOL 1

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01 Q. And for those ones that
02 related to the Kutzit product, how did you
03 determine that they were related to the
04 Kutzit product?

05 A. With benzene.

06 Q. That was the only product that
07 Savogran used benzene as an ingredient in?

08 A. Yes.

09 Q. So did you provide to
10 Savogran's counsel all of the cards with
11 information about the benzene on them?

12 A. Yes.

13 Q. And is that what's attached to
14 as Exhibit 8 to your deposition?

15 A. Yes.

16 Q. What time period do the cards
17 that you found relate to?

18 A. So these cards have dates of
19 '72 and '73 on them.

20 Q. Do you know when Ms. Kowalski
21 started to work at Savogran?

22 A. No, I don't. No.

23 Q. Do you know if she worked at
24 Savogran before 1972?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge and calls for expert opinion.

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MONIQUE, MARK
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01 A. Not sure.

02 Q. So, these are likely -- most
03 likely not the only records that Savogran
04 has ever had about purchasing benzene, but
05 they at least relate to the period of '72
06 and '73?

07 MR. LEDGER: Object. Calls
08 for speculation.

09 THE WITNESS: Yeah. I
10 wouldn't know that, but yeah.

11 BY MR. DuPONT:

12 Q. But you're not -- you're not
13 able to say that these were the only records
14 that Savogran ever had about buying benzene?

15 A. These are the records that I
16 found.

17 Q. Okay.

18 A. Yeah, and this is from
19 Norwood. It's not -- this is a case in
20 California; right?

21 Q. Correct.

22 A. Yeah. Not quite sure where
23 you're going with this, but I guess we'll
24 find out.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

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MONIQUE, MARK
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01 Q. How do you know that these
02 records related to Norwood?

03 A. Because they were in the, you
04 know, the Norwood purchasing file that I
05 found. Yeah.

06 Q. Describe that for me.

07 A. The file?

08 Q. Yes.

09 A. It's a metal box, you know.

10 Q. Was there --

11 A. It had the card sitting in it.

12 Q. Was there some sort of
13 sub-folder within this filing cabinet that
14 said Norwood purchasing records?

15 A. I think it had more -- it's
16 got more to do with the -- the vendors that
17 are listed on there; Boston, Mass.,
18 New York.

19 Q. Okay. So it's your
20 expectation that these were records for
21 Norwood because of the geographic locations
22 listed next to the vendor names?

23 A. Yes.

24 Q. All right. And those are east

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, calls for speculation and the witness lacks personal knowledge.

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01 coast locations?

02 A. Yes.

03 Q. Do you know whether purchase
04 records from the Addison, Illinois facility,
05 or any other facility, were transferred to
06 the Norwood, Massachusetts offices?

07 A. They weren't.

08 Q. Do you know that for a fact?

09 A. I've never found them.

10 Q. All right. Do you know where
11 the purchase records for ingredients used to
12 manufacture product at the Addison, Illinois
13 facility are located?

14 A. No. We don't have that
15 facility anymore. That's gone.

16 Q. What happened with the
17 Addison, Illinois records?

18 A. I have no idea.

19 Q. Do you know if anyone put
20 purchase records from Addison, Illinois, or
21 any other facility, into the filing cabinet
22 where you found these purchase cards?

23 A. There were none in there.

24 Q. All right. So let's talk

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01 about how -- what do you call these cards?

02 A. Those are purchase records.

03 Q. Okay. Let's talk about how
04 these purchase records work. Now, when you
05 started working at Savogran in 1987, did you
06 see how Helen Kowalski filled out purchase
07 records?

08 A. Not really, no. Didn't pay
09 much attention to it.

10 Q. Are you familiar with Ms.
11 Kowalski's handwriting?

12 A. Vaguely.

13 Q. Are you able to tell whose
14 handwriting it is on these purchase records?

15 A. No. Not with any type of
16 certainty, I guess, would be a better way of
17 saying it.

18 Q. Okay.

19 A. Yeah.

20 Q. Do these purchase records, are
21 they in the same format that you were
22 accustomed to Ms. Kowalski using when you
23 began with the company?

24 A. Yes.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 Q. And, just briefly, describe
02 what format is that?

03 A. I'm not following your
04 question on that one.

05 Q. Well, these -- these purchase
06 records at the top have an item number -- a
07 category for item number, a category for
08 specifications and then several columns.
09 The left-hand column is number. And then
10 the next column over says vendor. Next
11 column after that is street. Then city.
12 And it looks like, is it a Z-N?

13 A. Yeah. It doesn't look like
14 she was following any type of format there.
15 It's all over the place.

16 Q. And then there's a column for
17 state, a column for terms, column for
18 shipping --

19 A. Yeah. She didn't use any of
20 that.

21 Q. But the format of these
22 purchase records is similar to the format
23 that you saw Ms. Kowalski using in 1987?

24 A. Oh, yes.

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01 Q. Then next to -- under the
02 category of vendor there are several
03 company names written here. And, I
04 apologize, this copy is a little light. I
05 have a darker copy if we need to look at it.

06 The first vendor is Metro Oil.
07 Did I read that correctly?

08 A. I can't read it on mine.

09 Q. Let me give you a different
10 copy and see if that's easier to read.

11 - - -

12 (Whereupon the document was
13 marked, for identification purposes,
14 as Monique Exhibit Number 9.)

15 - - -

16 BY MR. DuPONT:

17 Q. I'm going to hand to you what
18 I marked as Exhibit 9. And Exhibit 9, for
19 the record, is the March 21, 2017 letter
20 from counsel for Savogran with a second
21 Supplemental Answer of Defendant, The
22 Savogran Company, to Plaintiffs'
23 Interrogatories and Requests For Production
24 attached to it. And then the same purchase

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 records that were -- we've marked as
02 Exhibit 8 are also attached. And this is a
03 darker copy, so let's see if this helps you
04 read it.

05 And under the category here,
06 does it appear to say Metro Oil Chemical
07 Company?

08 A. Yes.

09 Q. All right. And there's a --
10 followed by that is American Mineral Spirits
11 Company?

12 A. Yes.

13 Q. And then, after that is
14 Houghton Chemical Company?

15 A. Yes.

16 Q. And then the fourth one listed
17 is Ashland Chemical Company.

18 A. Yes. It's kind of hard to
19 read, but I think so, yes.

20 Q. So, these records indicate
21 that companies that were selling this --
22 this blend of benzol and acetone were Metro
23 Oil Chemical Company, American Mineral
24 Spirits Company, Houghton Chemical Company,

Savogran
objects to the
designation on
the grounds that
it is vague and
ambiguous,
lacks foundation,
assumes facts
not in evidence,
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knowledge.

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lacks personal
knowledge.

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01 and Ashland Chemical Company. Those are
02 companies that sold this blend of benzol and
03 acetone to The Savogran Company?

04 A. In Norwood.

05 MS. SAYRE: Objection. Calls
06 for speculation.

07 BY MR. DuPONT:

08 Q. Next to the vendors' names
09 there are numbers written on the left-hand
10 column. And it begins with the number four
11 next to Metro Oil, the number one next to
12 American Mineral Spirits Company, the number
13 two next to Houghton Chemical Company, and
14 the number three next to Ashland Chemical
15 Company. Do you see that?

16 A. Yes.

17 Q. Do you know what those numbers
18 signify?

19 A. No, I don't. Because she
20 didn't use them anywhere else on the card
21 there.

22 Q. On the top of the form, does
23 it say benzol/with ten percent acetone
24 blend?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 A. Yes.

02 Q. So what does that mean to you?

03 A. 90 percent benzol and ten
04 percent acetone.

05 Q. And then there's a weight next
06 to it, 7. -- is that 33 gallons?

07 A. It's kind of hard to read on
08 this one.

09 MR. LEDGER: Well, don't
10 speculate. If you know.

11 THE WITNESS: Yeah. I don't.

12 BY MR. DuPONT:

13 Q. Below that there's -- there's
14 some writing, it looks like one over six,
15 .8820-8860. Freezes at 45 degrees. Do you
16 see that?

17 A. Yes.

18 Q. And then does it continue to
19 say, ten percent toluol, which is another
20 word for toluene, added to prevent freezing.

21 A. Yes.

22 Q. And it says, Extras: Freezing
23 during winter?

24 A. Yes.

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01 Q. So it looks like there was
02 benzene -- or excuse me -- strike that.

03 It looks like the blend was 90
04 percent benzol and ten percent acetone, but
05 then there's reference to maybe adding
06 toluene to prevent there from being freezing
07 in the wintertime?

08 A. Yes.

09 Q. On top of that it says -- it's
10 hard to read. It says, change to 10,000
11 gallons. And then it's illegible, followed
12 by what looks like November 20, '72?

13 MR. LEDGER: Object. It's
14 calling for speculation. If you
15 think you can understand that.

16 THE WITNESS: I'm not seeing
17 that.

18 MR. DuPONT: Okay.

19 THE WITNESS: I'm sorry.

20 BY MR. DuPONT:

21 Q. It might be a little easier to
22 look on the copy that's Exhibit 8 since it's
23 blown up.

24 A. Okay.

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01 Q. Can you make out what's
02 written on that top right-hand corner?

03 MR. LEDGER: Objection. It's
04 calling for speculation. The
05 document speaks for itself.

06 THE WITNESS: Yeah, I can see
07 the change, the ten thousand gallon.

08 BY MR. DuPONT:

09 Q. And, then, does there appear
10 to be a date in the top right-hand corner?
11 It says November 20, 1972?

12 A. It's possible. That is --
13 that is hard to read.

14 Q. And do you know what that date
15 means?

16 A. I don't.

17 Q. All right. So, let's go back
18 to the columns. With vendor, next to the
19 vendor name is a street -- a category for
20 street and city. Do you see that?

21 A. Yes.

22 Q. And, for example, next to
23 Houghton Chemical looks to be 52 Cambridge
24 Street in Alston, Massachusetts? Is that

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01 how you read that?

02 MR. LEDGER: Object. Calls
03 for speculation. The document speaks
04 for itself.

05 THE WITNESS: Yeah. I
06 honestly can't read it.

07 MR. DuPONT: Okay.

08 THE WITNESS: Yeah. I would
09 for you if I could, but I can't.

10 BY MR. DuPONT:

11 Q. Let me do this: I'm going to
12 give you a version of Exhibit 8 that's on my
13 laptop so that we can blow it up. And ask
14 you, can you read it better that way?

15 A. Yes.

16 Q. All right. So, it looks like
17 the address next to Houghton Chemical, is it
18 52 Cambridge?

19 MR. LEDGER: Objection.
20 Document speaks for itself.

21 THE WITNESS: Yes.

22 BY MR. DuPONT:

23 Q. All right. And that's in
24 Alston, Massachusetts?

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01 A. Yes.

02 Q. Can you make out the address

03 next to Metro Oil Chemical Company?

04 A. So P.O. Box 335, Ridgefield,

05 New Jersey.

06 Q. And can you make out the

07 address next to American Mineral Spirits

08 Company?

09 A. Pier Road, East Providence.

10 Q. East Providence, Rhode Island?

11 A. Yes.

12 Q. And then next to that, in

13 brackets, or parentheses, it's written --

14 does it say Boston plant, 364-0990?

15 MR. LEDGER: Object.

16 Speculation. Document speaks for

17 itself.

18 THE WITNESS: Who's this for

19 again?

20 BY MR. DuPONT:

21 Q. It looks to line up with

22 American Mineral Spirits Company.

23 A. Oh, okay. Okay.

24 Q. Is that what's written? Can

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01 you tell?

02 MR. LEDGER: Same objection.

03 THE WITNESS: No. I must be
04 blind because I'm not seeing that.

05 Pier Road, East Providence

06 Rhode Island, that line?

07 BY MR. DuPONT:

08 Q. Right.

09 A. Boston.

10 Q. Does it look like Boston --

11 A. Phone.

12 Q. Phone, okay.

13 A. Yeah.

14 Q. Boston phone, 364-0990?

15 A. Right, yeah.

16 Q. It appears that that was a
17 phone number for American Mineral Spirits?

18 MR. LEDGER: Object. Calls
19 for speculation.

20 THE WITNESS: Yeah, not sure.

21 BY MR. DuPONT:

22 Q. All right. And then fourth on
23 the list of vendors is Ashland Chemical

24 Company?

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01 A. Yes.

02 Q. And can you make out the
03 address for Ashland?

04 A. There's no address.

05 MR. LEDGER: Objection. Calls
06 for speculation. Document speaks for
07 itself.

08 THE WITNESS: Westfield, Mass.

09 BY MR. DuPONT:

10 Q. And the phone number?

11 A. Yes.

12 Q. And that's 413 -- is it
13 569-8669?

14 A. It's either a nine or an eight
15 there. Yes.

16 Q. Okay. And can you make out
17 the writing that follows that?

18 MR. LEDGER: Objection,
19 speculation. Document speaks for
20 itself.

21 THE WITNESS: It's like going
22 to the eye doctor.

23 Jim something and Peter
24 something. In New York. Can't make

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01 out the town.

02 BY MR. DuPONT:

03 Q. And what follows after
04 New York?

05 A. 6,000 gallon.

06 Q. At .1293 per gallon?

07 A. Yes.

08 Q. And do you know what those
09 numbers refer to?

10 A. I don't.

11 Q. Now, underneath that portion
12 of the purchase records there are columns
13 that begin with date, then vendor, then
14 order number, and quoted price. Can you
15 read that?

16 A. Yes.

17 Q. Is it your understanding that
18 the dates that are written under the column,
19 date, are those dates that product was
20 ordered by Savogran? What do those dates
21 refer to?

22 MR. LEDGER: Objection, calls
23 for speculation.

24 MS. BONNEVILLE: Objection,

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01 calls for speculation.
02 THE WITNESS: Yes, most likely
03 the date that she ordered it.
04 BY MR. DuPONT:
05 Q. Then there's another column
06 for promise delivery date. Do you see that?
07 A. Yes.
08 Q. And then there's a column for
09 follow-up date towards the right-hand side?
10 A. Yes.
11 Q. So reading -- let's pick one
12 line from this form. The first line has a
13 date of November, it looks like November 19,
14 1972; is that correct?
15 A. Yes.
16 Q. And the vendor is listed as
17 Houghton?
18 A. Uh-huh.
19 Q. Is that right?
20 A. Excuse me -- yes.
21 Q. And then, the order number is
22 08920 it looks like?
23 A. Yes.
24 Q. So, that should be the number

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01 that was used to identify Savogran ordering
02 the benzol acetone blend from Houghton on
03 November 19, 1972?

04 MR. LEDGER: Objection, calls
05 for speculation.

06 THE WITNESS: Possibly.

07 BY MR. DuPONT:

08 Q. And then the next column says,
09 quoted price. Is that the price that
10 Savogran was quoted by the vendor, Houghton?

11 MR. LEDGER: Calls for
12 speculation.

13 THE WITNESS: Possibly.

14 BY MR. DuPONT:

15 Q. And then what's written there
16 is .3058?

17 A. Yes.

18 Q. So, is that a little more than
19 30 cents?

20 MR. LEDGER: Calls for
21 speculation.

22 THE WITNESS: Possibly.

23 BY MR. DuPONT:

24 Q. And then the next category

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01 over is quantity ordered. And it says four
02 point -- looks like 4.000 per -- well, can
03 you make out what that -- what that means?

04 MR. LEDGER: Calls for
05 speculation.

06 THE WITNESS: I can't.

07 BY MR. DuPONT:

08 Q. Okay. And if we keep reading
09 over, it looks like there's information in
10 parentheses with acetone at the top and
11 benzol at the bottom. Do you see that?

12 A. Yes.

13 Q. And is that weight by gallon,
14 or quantity by gallon of the acetone and
15 benzol?

16 MR. LEDGER: Objection,
17 speculation.

18 THE WITNESS: Yeah, not sure.

19 BY MR. DuPONT:

20 Q. The next line on the record is
21 dated November 22, 1972; is that right?

22 A. Yes.

23 Q. All right. So, November 22,
24 1972, there is a purchase of the benzol

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01 acetone blend from AMSCO. That's American
02 Mineral Spirits Company?

03 A. Yes.

04 MS. BONNEVILLE: Objection,
05 calls for speculation.

06 BY MR. DuPONT:

07 Q. And that has a purchase order
08 number of 08939?

09 A. Yes.

10 Q. And it appears that there was
11 6,050 gallons of the blend of benzol and
12 acetone ordered on November 22, 1972 from
13 AMSCO?

14 MR. LEDGER: Calls for
15 speculation.

16 THE WITNESS: Yes.

17 BY MR. DuPONT:

18 Q. And then there's a category
19 for quantity received. And in that column
20 is written November 29?

21 MR. LEDGER: Calls for
22 speculation.

23 THE WITNESS: Yes.

24 BY MR. DuPONT:

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01 Q. Is that an indication to you
02 that this blend of benzol and acetone that
03 was sold by AMSCO was received by Savogran
04 on November 29?

05 MR. LEDGER: Calls for
06 speculation.

07 MS. BONNEVILLE: Objection,
08 calls for speculation.

09 THE WITNESS: I have no idea
10 on that one.

11 BY MR. DuPONT:

12 Q. Would it be logical to you
13 that seven days after Savogran ordered the
14 benzol acetone blend from American Mineral
15 Spirits Company, it would receive the blend
16 on November 29th?

17 MR. LEDGER: Calls for
18 speculation.

19 THE WITNESS: Yeah, I have no
20 idea what the supply chain was like
21 back then, or how long it took things
22 to get.

23 BY MR. DuPONT:

24 Q. All right. The next line is

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01 another reference to purchasing the benzene
02 or benzol acetone blend from American
03 Mineral Spirits Company in December of 1972?

04 MR. LEDGER: Speculation.

05 THE WITNESS: Yeah. Yes.

06 BY MR. DuPONT:

07 Q. It's in December, and it's
08 before December 20, 1972, because the next
09 purchase entry is December 20, 1972?

10 MR. LEDGER: Calls for
11 speculation.

12 THE WITNESS: Yes.

13 BY MR. DuPONT:

14 Q. And the order number for that
15 purchase of the benzol acetone blend from
16 American Mineral Spirits Company is --
17 appears to be 08965?

18 MR. LEDGER: Calls for
19 speculation.

20 THE WITNESS: Yes.

21 BY MR. DuPONT:

22 Q. And it appears to be 6,056
23 gallons of the benzol acetone blend?

24 MR. LEDGER: Calls for

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01 speculation.

02 THE WITNESS: Yes.

03 BY MR. DuPONT:

04 Q. Then the next two purchases,
05 looks like December 20 and -- difficult to
06 make out the other date in December. But
07 the next two purchases listed here are from
08 Houghton?

09 A. Yes.

10 Q. And then after those two lines
11 there is a January 10, 1973 purchase of the
12 benzol acetone blend from AMSCO; is that
13 correct?

14 MR. LEDGER: Calls for
15 speculation.

16 MS. BONNEVILLE: Join.

17 THE WITNESS: It looks like
18 it's AMSCO. It's hard to read on
19 this copy.

20 BY MR. DuPONT:

21 Q. I have a -- I pass back to you
22 the laptop with the blown up copy on it.

23 A. It's possibly AMSCO.

24 Q. All right. And that's January

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01 10, 1973?

02 A. Yes.

03 Q. And then the next line -- keep
04 it in front of you.

05 The next line, is that
06 purchase on February 6, 1973 of the benzol
07 acetone blend from Ashland?

08 A. Yes.

09 Q. And can you read for us what
10 quantity of the benzol acetone blend was
11 purchased at that time?

12 MR. LEDGER: Calls for
13 speculation.

14 THE WITNESS: Which one was
15 this?

16 BY MR. DuPONT:

17 Q. This was, it looks like
18 February 6, 1973. Purchase of benzol
19 acetone from Ashland.

20 A. It's February 5th.

21 Q. Oh, February 5. Yes.

22 A. Yeah. It looks like 6,000
23 gallons.

24 Q. Which is consistent with some

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01 of the other purchases that we've seen,
02 around 6,000 gallons at a time?

03 A. Yes.

04 Q. Now, if you move down, there's
05 some additional purchases in February, April
06 and May, looks like from Houghton and Metro
07 Oil. Do you see that?

08 A. Yes.

09 Q. And if we go down to the last
10 entry, there's a May -- is it May 10 --
11 purchase from Ashland of the benzol acetone
12 blend?

13 A. Could be the 11th too.

14 Q. Either May 10 or 11 there --

15 A. Yeah.

16 Q. -- a purchase of, it looks
17 like 6,000 gallons of the benzol acetone
18 blend from Ashland?

19 MR. LEDGER: Calls for
20 speculation.

21 THE WITNESS: Yes.

22 BY MR. DuPONT:

23 Q. Now, if you turn to the next
24 page, that's Bates Number 124 on the bottom.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 What is this page? Is this another side of
02 the same card that we're looking at on Bates
03 Number 123, or how does this work?

04 A. Yes, it is the opposite side.

05 Q. Okay. And what information
06 does this card have?

07 A. So, it shows the -- she's
08 keeping track of her inventory. What's on
09 hand, what's consumed, what's left.

10 Q. Okay. So, the --

11 A. It's pretty simple.

12 Q. So, the date in the left-hand
13 column, what do those dates represent?

14 A. That's the date it was -- came
15 out of inventory.

16 Q. When you say came out of
17 inventory, what do you mean?

18 A. It was used.

19 Q. So those are -- are those
20 dates that the product was blended?

21 A. Possibly.

22 Q. Were they dates that the
23 benzol acetone blend was moved from the tank
24 that stored the benzol acetone blend to the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 first mixing tank?

02 MR. LEDGER: Calls for

03 speculation.

04 THE WITNESS: Possibly, yep.

05 BY MR. DuPONT:

06 Q. Okay. There are job order
07 numbers that are listed here. Do you know
08 what the significance of the job order
09 number is?

10 A. I don't.

11 Q. Then there's a column for
12 issue, and numbers listed under there. Do
13 you know what the issue means?

14 A. That is where it came out of
15 inventory. You just do the math on it from
16 the right-hand side, under balance.

17 Q. Explain to me what you mean by
18 that.

19 A. So on that 11,6 line, starting
20 balance of 5557. And then she took 2,034
21 out of -- out of inventory to get her
22 balance down to -- excuse me -- down to
23 3523, it looks like. So it's just a running
24 inventory.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 Q. So it looks like on November
02 6, 1972, 2,034 gallons of the benzol acetone
03 blend was moved from the storage tank for
04 that blend to the mixing tank?

05 A. Possibly.

06 Q. And before that 2,034 gallons
07 was moved, there was 5,557 gallons of the
08 benzol acetone blend in the tank that stored
09 that material?

10 MR. LEDGER: Assumes facts not
11 in evidence. Calls for speculation.

12 THE WITNESS: Possibly.

13 BY MR. DuPONT:

14 Q. Is that how you interpret this
15 document?

16 A. Yes.

17 Q. Was there a similar system
18 used by Savogran when you began to work for
19 the company in 1987, for tracking inventory?

20 A. Yes.

21 Q. And if we were to continue
22 reading down this, it looks like November 8,
23 1972, 904 gallons of the benzol acetone
24 blend was moved from the -- the storage

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 tank, and that brought the balance down to
02 2,619 gallons of the benzol acetone blend in
03 the tank that stored the benzol acetone
04 blend.

05 MR. LEDGER: Calls for
06 speculation.

07 THE WITNESS: It's an -- it's
08 an inventory move. We don't know
09 what the reason could be. Could have
10 done a physical count and just
11 adjusted the inventory. So it
12 doesn't necessarily mean it was --
13 something was made.

14 BY MR. DuPONT:

15 Q. Okay. But the -- the issue
16 gallons means that something -- there was
17 product removed from the benzol acetone
18 blend tank?

19 A. No, not necessarily. Look at
20 that last entry in November. Right?

21 Q. Okay.

22 A. It says small amount, 12.

23 Right?

24 Q. Yes.

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01 A. So she made some type of
02 adjustment there. Might not have
03 necessarily meant that they made something.

04 Q. Okay. If there was a -- for
05 those larger entries --

06 A. So, this isn't a production
07 record, this is the inventory.

08 Q. Okay.

09 A. Yeah. So don't confuse the
10 two.

11 Q. Okay. So, was there -- what
12 else would explain why there was a drop in
13 inventory in the benzol acetone blend tank,
14 rather than moving some of that inventory to
15 the mixing tank to make the product?

16 MR. LEDGER: Calls for
17 speculation.

18 THE WITNESS: Math. I don't
19 know. Received in the wrong
20 quantity.

21 BY MR. DuPONT:

22 Q. Okay.

23 A. You know.

24 Q. Now this -- so this is an

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01 inventory record. And if we look to the
02 right-hand half of the page, does this
03 continue to show inventory for the benzol
04 acetone blend through May 5 of 1973?

05 A. Yes.

06 Q. Now, if we turn to the next
07 page, which is Bates Number 125. Does that
08 begin with the benzol acetone blend from the
09 inventory on the date of May 11, 1973?

10 A. Yes.

11 Q. And it continues to list the
12 inventory of the benzol acetone blend
13 through February 28, 1974?

14 A. Yes.

15 Q. So, Savogran has inventory of
16 the ninety percent benzol, ten percent
17 acetone blend on hand until February 28,
18 1974?

19 MR. LEDGER: Objection, calls
20 for speculation.

21 THE WITNESS: So, the tank is
22 essentially empty at that point.

23 BY MR. DuPONT:

24 Q. Right. And --

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 A. I think if you look at the
02 inventory, with the inches on it -- what --
03 it looks like four from here. So the tank
04 was essentially dry.

05 Q. Okay. So, February 28, 1974,
06 it looks like there's only 77 gallons?

07 A. No, 27.

08 Q. 27 gallons --

09 A. Yeah.

10 Q. -- of the blend left?

11 A. Correct.

12 Q. All right. And then you
13 mention inches. I'm scrolling up to see.
14 Where do you see reference to inches?

15 A. If you look under that column
16 that says damaged in the factory.

17 Q. Right.

18 A. My copy looks like there's an
19 inch sign next to it, next to the number.

20 Q. Yes. And inches, what does
21 that say?

22 A. In the old days they would
23 stick the tank -- we didn't have electronic
24 monitoring like we have nowadays, so you'd

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01 actually be sticking the tank, and then they
02 would see how much was in there.

03 Q. All right. And so the stick
04 either had inch marks on it or another way?

05 A. Had inch marks on it.

06 Q. Had inch marks on it?

07 A. Yes.

08 Q. And you could calculate the
09 number of gallons of liquid in the tank
10 based on how many inches of liquid there was
11 in the tank?

12 A. Correct.

13 Q. And it looks like the
14 inventory on February 26, 1974 changed from
15 43 gallons on February 26th, to 717 gallons
16 on February 27th, 1974?

17 MR. LEDGER: Calls for
18 speculation.

19 THE WITNESS: I don't see
20 that. Where are you seeing that at?

21 MR. DuPONT: On the right-hand
22 portion of the record.

23 THE WITNESS: Yeah, I see it.

24 BY MR. DuPONT:

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01 Q. Does that indicate to you that
02 Savogran would have received another 600 and
03 some gallons of the acetone blend -- of the
04 benzol acetone blend on February 27, 1974?

05 A. No.

06 MR. LEDGER: Calls for
07 speculation.

08 THE WITNESS: It looks like
09 they made a math error because the
10 balance is going down, it's not going
11 up.

12 BY MR. DuPONT:

13 Q. Well, there's several points
14 where the balance is low and then it
15 increases. So if you look at the same --
16 the same half of the page -- for example,
17 you have -- on January 16, 1974, there's 86
18 gallons in inventory. Do you see that?

19 A. What date was it again?

20 Q. January 16, 1974.

21 A. Yes.

22 Q. There's 86 gallons of the
23 benzene -- benzol acetone blend in
24 inventory. Then the next day, January 17,

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01 1974, there's 172 gallons?

02 A. Yeah. Yes.

03 Q. And then January 22, 1974,

04 there's 239 gallons?

05 A. Yes.

06 Q. And then, if we go back down

07 to February 1, 1974, it looks like there's

08 about 45 gallons of the benzol acetone blend

09 in inventory?

10 A. No, that's not the inventory

11 number. The inventory number is on the

12 right-hand side.

13 Q. Okay. I'm sorry, that's the

14 issue number.

15 A. Right.

16 Q. All right. So, the inventory

17 number, or the balance, is on the -- on the

18 right-hand side?

19 A. Yes.

20 Q. Okay. All right. My fault,

21 I'm sorry. So let's back up then. Looking

22 at the left-hand page -- left-hand side of

23 the page on -- is that August 10, 1973, the

24 inventory is listed as 1,247 gallons of the

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01 benzol acetone blend?

02 A. Yes.

03 Q. And if we go back over to the
04 right-hand side of the page. On August 15,
05 197 -- can you make the date out there?

06 A. Looks like '73.

07 Q. Okay. August 15, 1973, the
08 inventory is now 4,673 gallons?

09 A. Yes.

10 Q. All right. So, there was an
11 increase of approximately, is it 3800
12 gallons?

13 A. Yes.

14 Q. So it looks like on August 15,
15 1973 there was receipt of a shipment of the
16 benzol acetone blend of about 3,800 gallons?

17 MR. LEDGER: Calls for
18 speculation.

19 THE WITNESS: Yes.

20 BY MR. DuPONT:

21 Q. And then by August 21 of 1973,
22 the inventory of the benzol acetone blend is
23 down to 294 gallons?

24 A. What date was that again? I'm

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01 sorry.

02 Q. It Looks like -- it looks like
03 it's either August -- looks like August 21,
04 1974, because I'm counting five rows down
05 for the balance and five rows down for the
06 date?

07 A. Oh, '73, you mean?

08 Q. '73, yes.

09 A. Okay. Yeah.

10 Q. August 21, 1973 --

11 A. I got you. Yeah.

12 Q. Inventory, 294 gallons?

13 A. Yeah. Yes.

14 Q. And then on September 4, 1973
15 the inventory is 4,999 gallons?

16 A. Yes.

17 Q. And there is a record that
18 there was a receipt of 4,855 gallons on
19 November -- excuse me, September 4th, 1973?

20 A. Yes.

21 Q. And then the inventory keeps
22 going down until September 25, 1973, where
23 there's 115 gallons in the inventory?

24 A. Yes.

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01 Q. And then it looks like on
02 January 1, 1974, the inventory goes back up
03 to 6,051 gallons of the benzol acetone
04 blend?

05 A. Yes.

06 Q. And it looks like the company
07 received, on that same date, 6,529 gallons
08 of benzol acetone blend?

09 MR. LEDGER: Calls for
10 speculation.

11 THE WITNESS: Yes, I'm doing
12 the math myself.

13 BY MR. DuPONT:

14 Q. And that's actually written
15 under the column for received, is 6,529
16 gallons?

17 A. Yes.

18 Q. It looks like on that date,
19 January 1, 1974, there was -- 478 gallons of
20 the benzol acetone blend were issued, which
21 is why there's now a balance of 6,051
22 gallons of the blend?

23 A. Yes.

24 Q. So, would that indicate to you

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 that on January 1, 1974 there was a transfer
02 of 478 gallons of the benzol acetone blend
03 to make product from that shipment of 6,529
04 gallons of the blend?

05 MR. LEDGER: Calls for
06 speculation.

07 THE WITNESS: No, because,
08 like I said before, it's not a
09 purchase record -- it's not a
10 production record, it's an inventory
11 record.

12 BY MR. DuPONT:

13 Q. Okay. It looks like from
14 January 1, 1974 through February 24 or 28
15 1974, the inventory decreases without going
16 back up? Is that right?

17 A. Yes.

18 Q. Okay. So, would that indicate
19 to you that Savogran received 6,529 gallons
20 of the benzol acetone blend on January 1,
21 1974. And then that was consumed between
22 January 1, 1974 and February 24 or 28, 1974?

23 MR. LEDGER: Calls for
24 speculation.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 THE WITNESS: I don't know if
02 I would use the word consume because
03 it's not a production record, but the
04 inventory went from -- from, you
05 know, 6,051 to 27.

06 BY MR. DuPONT:

07 Q. Do you know of anything else
08 that Savogran would have done with the
09 inventory of the 90 percent benzol, ten
10 percent acetone, besides put it into the
11 Kutzit product?

12 A. I don't.

13 MS. BONNEVILLE: Objection,
14 calls for speculation.

15 BY MR. DuPONT:

16 Q. So, not knowing that there's
17 anything else Savogran would have done with
18 the product between January and
19 February 1974, the most likely conclusion is
20 that that benzol acetone blend was being
21 used to manufacture product?

22 MR. LEDGER: Calls for
23 speculation, argumentative.

24 THE WITNESS: Yeah, I can't

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 make that statement.

02 BY MR. DuPONT:

03 Q. But you can't identify
04 anything else that Savogran would have done
05 with the benzol acetone blend in January and
06 February of 1974; correct?

07 A. Correct.

08 MR. DuPONT: All right. Why
09 don't we take five minutes. Go off
10 the record.

11 VIDEO TECHNICIAN: The time is
12 1:32, off the record.

13 (Whereupon there was a recess
14 in the proceeding.)

15 VIDEO TECHNICIAN: This is the
16 beginning of media unit three. We're
17 back on the record. The time is
18 1:42.

19 BY MR. DuPONT:

20 Q. Mr. Monique, I have a few more
21 questions about the benzol acetone blend
22 purchase records and inventory records that
23 we've been looking at.

24 Directing your attention to

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01 the page with the Bates Number 126 on it.

02 Do you see on June 4, 1973 there is an order
03 of the benzol acetone blend from Ashland
04 that has an order number 09280 and a
05 quantity ordered, 6500 gallons?

06 MR. LEDGER: Calls for
07 speculation.

08 THE WITNESS: Yes.

09 BY MR. DuPONT:

10 Q. And if we flip back to the
11 Bates Number 125, that's the inventory?

12 A. Yes.

13 Q. Do you see that there's an
14 entry on June 8, 1973, with an order number
15 of 09280?

16 A. Yes, I got it. Sorry about
17 that.

18 Q. And next to that, it appears
19 to be 5445 gallons, next to that order
20 number?

21 A. Yes.

22 Q. And then, the entry just
23 before that, on June 6th, there's an issue
24 of 1,024 gallons?

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01 A. Yes.

02 Q. And when you add that issue
03 number up, 1,024 to the gallons next to the
04 order number of 5,445, they come out to
05 approximately 6,500 gallons?

06 A. Okay.

07 Q. So using the volume of the
08 blend and the order number, does it appear
09 that we can match the purchase record and
10 the inventory record up to see that that --
11 that order on June 4, 1973 of Ashland's
12 benzol acetone blend of 6,500 gallons is
13 what's reflected on the issue of June 6,
14 1973 of 1,024 gallons and the inventory
15 on -- or at least the received gallonage of
16 June 8th of 5,445 gallons?

17 A. You're just adding the balance
18 of -- what was that, 3973 --

19 Q. Right.

20 A. -- to the 5945 to get the nine
21 -- you know, what is that, 9318. You don't
22 have to concern yourself with the 1024.

23 Q. Okay. So it's -- I need to
24 look at the balance column?

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01 A. Yeah. Right. That's a
02 running total.

03 Q. Okay. So, there's
04 3,375 gallons as of June 6, 1973. Then with
05 the addition of the blend from Ashland of
06 54 --

07 A. You just take the difference
08 between -- the balance on 6/8 and the
09 balance on 6/6 should equal the purchase on
10 6/8, because there's no issue on that 6/8.

11 Q. I see.

12 A. I would think. I don't have a
13 calculator in front of me. Does that work
14 out?

15 Q. Yes. Okay. So the difference
16 -- the increase in the balance from June 6
17 to June 8 is a reflection of the receipt of
18 the benzol acetone blend from Ashland that
19 corresponds to order number 09280?

20 A. Yes.

21 Q. All right.

22 A. Your orderly mind is -- is
23 overcomplicating things.

24 Q. Okay. So, using these

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01 records, and your understanding of how The
02 Savogran Company maintained inventory of
03 product, we can determine that during
04 certain dates certain suppliers' benzol
05 acetone blend were being used in the Kutzit
06 product?

07 A. Yes.

08 Q. And that's simply by tracking
09 when benzol was -- the benzol blend was
10 ordered and received from the suppliers and
11 then consumed in the product?

12 A. You can tie the whole thing
13 up.

14 Q. Right.

15 A. Yes.

16 Q. Okay. So I'd like to change
17 gears with you and hand you a document that
18 I'm marking as the next exhibit to your
19 deposition, which is Exhibit 10.

20 - - -

21 (Whereupon the document was
22 marked, for identification purposes,
23 as Monique Exhibit Number 10.)

24 - - -

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01 BY MR. DuPONT:

02 Q. Exhibit 10 is Bates Number
03 Savogran 119 through 122. Do you see that?

04 A. Yes.

05 Q. What is Exhibit 10?

06 A. I must confess, I have not
07 read this, but we did produce it. And it's
08 the -- it's the agreement with Savogran
09 Pacific and -- and Savogran Company.

10 Q. All right. So Savogran
11 Pacific Corporation, what's your
12 understanding Savogran Pacific Corporation
13 was?

14 A. They sold Savogran products
15 west of the Rockies.

16 Q. And when did Savogran Pacific
17 Corporation begin to sell Savogran products
18 west of the Rockies?

19 A. I, you know, specifically
20 don't know. Well, we could certainly tear
21 the agreement apart, I guess.

22 Q. And there's some other
23 correspondence we can look at as well that
24 might help us the answer that question.

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01 A. The document has February 1966
02 on it.

03 Q. Right. So, this -- the first
04 page of this agreement says the 15th day of
05 February, 1966?

06 A. Correct, yeah.

07 Q. And so, the -- the arrangement
08 here is that The Savogran Company owns the
09 Savogran name and manufactures the Savogran
10 product. And Savogran Pacific Corporation
11 wants to sell the product in the western
12 area of the United States?

13 MR. LEDGER: Well, I'll
14 object. Calls for speculation. If
15 you know, you can answer.

16 THE WITNESS: Yes.

17 BY MR. DuPONT:

18 Q. All right. In fact, as we
19 read through it, it says, in the second
20 paragraph of the first page, "The company",
21 referring to The Savogran Company, "is
22 engaged in the business of manufacturing and
23 selling paint removers, paint cleaners,
24 brush cleaners, and other related and allied

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01 products under the trade names of Savogran
02 Products, and has a proprietary interest in
03 certain formula and manufacturing
04 processes." Did I read that right?

05 A. Yes.

06 Q. All right. And so,
07 proprietary interest means it basically owns
08 the formula and manufacturing processes?

09 A. Yes.

10 Q. And in the next paragraph what
11 it states is that, "The Savogran Company,
12 for the terms of this agreement, grants
13 Savogran Pacific the exclusive right to use
14 the name Savogran in that territory where
15 freight rates break west of Chicago." What
16 does that mean to you?

17 MR. LEDGER: Object. It's
18 calling for speculation.

19 If you have an understanding,
20 you can go ahead.

21 THE WITNESS: West of the
22 Rockies.

23 BY MR. DuPONT:

24 Q. What it continues to say in

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01 this paragraph is that, "Savogran Pacific
02 shall also, for the term of this agreement,
03 have the exclusive right to sell and/or
04 manufacture any and all products of The
05 Savogran Company within said territorial
06 limits, again, west of the Rockies. But all
07 containers, labels or other printed matter
08 shall first be approved in writing by The
09 Savogran Company." Is that correct?

10 A. Yes.

11 Q. So, reading that, does that
12 mean to you that Savogran Pacific had the
13 right to either sell or manufacture, or do
14 both, Savogran products west of the Rockies
15 for the period of time that this agreement
16 was in place?

17 MR. LEDGER: Object, calls for
18 speculation.

19 THE WITNESS: Yes.

20 BY MR. DuPONT:

21 Q. And that any containers,
22 labels or other printed material that were
23 going to be used for The Savogran Company
24 products had to first be approved by The

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01 Savogran Company?

02 A. Yes.

03 Q. And it continues to read that
04 if Savogran Pacific Corporation were to
05 manufacture Savogran products, it had to do
06 so pursuant to strict accordance, or
07 compliance with specifications that The
08 Savogran Company gave to the Savogran
09 Pacific Corporation?

10 MR. LEDGER: Objection, calls
11 for speculation.

12 THE WITNESS: Yes.

13 BY MR. DuPONT:

14 Q. And it continues to read that,
15 "To the extent that Savogran Pacific
16 Corporation was going to manufacture
17 product, it could not manufacture any
18 products other than The Savogran Company
19 products, unless it had written approval
20 from The Savogran Company"?

21 A. Yes.

22 Q. And that if Savogran Pacific
23 Corporation were to develop new product for
24 the Savogran line, they should then become

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01 available to The Savogran Company for it to
02 sell?

03 A. Yes.

04 Q. Now, in the next paragraph
05 what it indicates is that Savogran Pacific
06 had the right to buy from The Savogran
07 Company for resale within that western
08 territory west of the Rockies products that
09 were manufactured by The Savogran Company at
10 five percent free on board rate from either
11 Norwood, Massachusetts or Addison, Illinois?

12 A. Yes.

13 Q. So, does that indicate to you
14 that at least this agreement planned into it
15 that The Savogran Company would manufacture
16 product in Norwood, Massachusetts and have
17 it sold by Savogran Pacific west of the
18 Rockies?

19 MR. LEDGER: Object. Calls
20 for speculation.

21 THE WITNESS: They had the
22 opportunity to do it, certainly.
23 Whether they did it or not, who
24 knows.

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01 BY MR. DuPONT:

02 Q. And then it continues to read
03 that Savogran Pacific may also purchase from
04 The Savogran Company any printed matter,
05 advertising copy or containers at the cost
06 that The Savogran Company had to pay for it,
07 plus 15 percent free on board from Norwood,
08 Massachusetts?

09 A. Yes.

10 Q. And free on board, that's a
11 term that's used for shipping materials?

12 A. Yes. That -- essentially that
13 meant that they paid the freight.

14 Q. All right. So, this agreement
15 also planned on Savogran Pacific having the
16 opportunity to obtain advertisement, printed
17 matter and even containers of The Savogran
18 Company product from the Norwood,
19 Massachusetts Savogran Company facility?

20 A. Yes.

21 Q. And the original time period
22 that this agreement was to be in place for
23 was five years, beginning February 15, 1966?

24 A. Yes, I see that.

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01 Q. And then, if you look to the
02 next page, Savogran Pacific agreed to pay
03 The Savogran Company three percent of the
04 net sales that were generated by Savogran
05 Pacific of Savogran products?

06 A. Yes, I see that.

07 Q. And then, at the end of each
08 calendar year, Savogran Pacific was to give
09 The Savogran Company an annual statement
10 that was certified by a certified public
11 accountant of what the sales were, and so
12 that The Savogran Company could figure out
13 how much money it was owed?

14 A. Yes.

15 Q. And if we continue reading
16 down this page, it indicates that The
17 Savogran Company was to have one of its
18 employees elected as a director of Savogran
19 Pacific Corporation?

20 A. Yes.

21 Q. And that Savogran Pacific was
22 to use the same list price, which was this
23 price list that we looked at in Exhibit 1.
24 They would use the same list price for the

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01 Savogran products as The Savogran Company
02 did?

03 A. No, I don't -- I disagree with
04 that.

05 Q. Oh, okay. Explain what that
06 sentence means.

07 A. Well, list price means it
08 would be the price. They weren't
09 necessarily using those same sheets.

10 Q. Okay.

11 A. Yeah.

12 Q. But the price is reflected on
13 the Savogran products jobber's price list we
14 marked as Exhibit 1.

15 A. Right.

16 Q. The agreement between Savogran
17 Company and Savogran Pacific was that
18 Savogran Pacific was to list for sale
19 Savogran products at the same price that
20 Savogran Company listed the products at?

21 A. Yes. That's how I would
22 interpret that.

23 Q. Okay.

24 A. Yeah.

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01 Q. And then it continues to read
02 that Savogran Pacific was agreeing to
03 service in that western territory all of The
04 Savogran Company's national accounts. Is
05 that correct?

06 A. Yes.

07 Q. So The Savogran Company had
08 existing relationships with national
09 accounts, and they wanted Savogran Pacific
10 to service those accounts?

11 MR. LEDGER: Object. Calls
12 for speculation.

13 THE WITNESS: Yeah, I don't
14 know if they had any business out
15 there.

16 BY MR. DuPONT:

17 Q. Well, certainly this agreement
18 was -- had in mind that there were national
19 accounts that Savogran Company already had
20 that it wanted Savogran Pacific to service,
21 meaning sell product to?

22 MR. LEDGER: Objection. Calls
23 for speculation.

24 THE WITNESS: It means that

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01 perhaps they had national accounts
02 that weren't getting serviced out
03 there.

04 MR. LEDGER: Well, don't
05 guess. If you know, you can testify
06 to what you know. If you don't,
07 don't. You got to make that clear.

08 THE WITNESS: I'm just
09 speculating. Yeah. All right. No
10 guessing.

11 BY MR. DuPONT:

12 Q. Okay. So then what it does
13 continue to read is that, "The Savogran
14 Company and Savogran Pacific will cooperate
15 for their mutual benefit in the purchase of
16 raw materials or otherwise." Do you see
17 that?

18 A. Yes.

19 Q. Does that mean to you that
20 Savogran -- The Savogran Company and
21 Savogran Pacific were to work together in
22 obtaining raw materials?

23 MR. LEDGER: Objection. Calls
24 for speculation. Calls for a legal

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01 opinion.

02 THE WITNESS: Yeah, I don't

03 know.

04 BY MR. DuPONT:

05 Q. Now, have you seen any
06 evidence, or heard from anybody at Savogran
07 that Savogran Pacific would -- was actually
08 manufacturing Savogran brand of products?

09 A. They were -- they were when
10 I -- when I got there in '87 they were, yep.

11 Q. Do you know when Savogran
12 Pacific actually started manufacturing
13 Savogran Company products?

14 A. I don't.

15 Q. Do you know if Savogran
16 Pacific was manufacturing Savogran branded
17 product at any point in time between 1963
18 and 1974?

19 A. I don't.

20 Q. Between 1963 and 1974, do you
21 know if any Kutzit product was manufactured
22 by Savogran at the Addison, Illinois
23 facility?

24 A. Say that again, I'm sorry.

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01 Q. Between 1963 and 1974, do you
02 know if any of the Kutzit product was
03 manufactured at the Addison, Illinois
04 facility?

05 A. If Kutzit was manufactured in
06 Illinois?

07 Q. Yes, correct.

08 A. Yeah, I believe it was.

09 Q. Between '63 and '74?

10 A. I'm not sure about that far
11 back, but --

12 Q. Do you know at some point in
13 time Kutzit was being manufactured at
14 Addison, Illinois?

15 A. Yes.

16 Q. All right. And as to whether
17 it was manufactured there between '63 and
18 '74, you're not certain?

19 A. I'm not sure of the dates.

20 Q. All right. Now, has any of
21 your research indicated to you that there
22 were suppliers of the benzol acetone mix to
23 Savogran, other than Ashland, American
24 Mineral Spirits Company, Houghton Chemical

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01 Company and Metro Oil Chemical Company?

02 A. That's it.

03 MS. BONNEVILLE: Objection,
04 calls for speculation.

05 THE WITNESS: The record that
06 we found, those were the ones that
07 were on it for Norwood. Right.

08 BY MR. DuPONT:

09 Q. Now, in reviewing Savogran's
10 records, did you see any indication that any
11 of its suppliers of the benzol acetone blend
12 provided information to Savogran that
13 benzene had been reported to cause leukemia?

14 MS. BONNEVILLE: Objection,
15 calls for speculation.

16 THE WITNESS: No.

17 BY MR. DuPONT:

18 Q. Did anybody ever convey to
19 you, through the course of your research to
20 prepare as a witness for your work or
21 otherwise, that any of those suppliers of
22 the benzol acetone blend had told Savogran
23 that there were reports of people developing
24 leukemia following benzene exposure?

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01 A. No.

02 MS. BONNEVILLE: Objection,
03 calls for speculation.

04 BY MR. DuPONT:

05 Q. Did your research of Savogran
06 company's records, and your discussion with
07 employees of The Savogran Company indicate
08 to you that any of its suppliers of the
09 benzol acetone blend advised The Savogran
10 Company that people exposed to benzene could
11 develop a fatal blood disease called
12 aplastic anemia?

13 MR. LEDGER: I'll object,
14 vague as to time.

15 MS. BONNEVILLE: Calls for
16 speculation.

17 MR. LEDGER: And vague as to
18 time. Are you referring to a certain
19 time period?

20 BY MR. DuPONT:

21 Q. Well, you know, we've looked
22 at the time period of 1963 through 1974 as a
23 period of there being benzene in the Kutzit
24 product. All right. So we'll talk about

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01 that time period.

02 At any -- have you learned,
03 through your research of records or
04 discussion with employees of Savogran, that
05 any of Savogran's chemical suppliers that
06 sold it the benzol acetone blend advised
07 Savogran during that period of time that
08 there was a risk of contracting aplastic
09 anemia, a fatal blood disease, from exposure
10 to benzene?

11 A. No.

12 Q. Have you seen any records in
13 the Savogran Company's records, or learned
14 from any of the Savogran Company's
15 employees, that they were told by any of the
16 suppliers of the benzol acetone blend that
17 benzene should not be used for a cleaning
18 solvent?

19 A. No.

20 MS. BONNEVILLE: Objection
21 calls for speculation.

22 - - -

23 (Whereupon the document was
24 marked, for identification purposes,

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01 as Monique Exhibit Number 11.)

02 - - -

03 BY MR. DuPONT:

04 Q. I'm going to hand to you a
05 document that I have marked as Exhibit 11 to
06 your deposition.

07 Exhibit 11 is the API
08 "Toxicological Review, Benzene"
09 September 1948. Do you see that?

10 A. Yes.

11 Q. Did you find this document
12 anywhere in The Savogran Company's records?

13 A. No.

14 Q. If we look on the first page
15 of the document, it says, "This review
16 summarizes the best available information on
17 the properties, characteristics and"
18 toxicity -- toxicologic -- strike that.
19 I'll try again.

20 "This review summarizes the
21 best available information on the
22 properties, characteristics and toxicology
23 of benzene." Do you see that?

24 A. Yes.

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01 Q. All right. It continues to
02 read, "It offers suggestions and tentative
03 recommendations pertaining to medical
04 treatment, medical examination and
05 precautionary measures for workers who are
06 exposed to benzene." Do you see that?

07 A. Yes.

08 Q. And it says that it was
09 prepared at the Harvard School of Public
10 Health in Boston, Massachusetts, under the
11 direction of Professor Phillip Drinker. Do
12 you see that?

13 A. Yes.

14 Q. And that the review has been
15 accepted for publication by the Medical
16 Advisory Committee of the American Petroleum
17 Institute. Does it say that on the first
18 page?

19 A. Yes.

20 Q. And it indicates that the
21 review was prepared by a Marshall Clinton
22 M.D., do you see that?

23 A. Yes.

24 Q. And it invites anybody who

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01 wants to submit additional information or
02 propose changes for consideration prior to
03 reissuance of this review to send that
04 information to the American Petroleum
05 Institute. Okay?

06 A. Yes.

07 Q. All right.

08 A. I didn't realize that was a
09 question. Sorry.

10 Q. And does this document list,
11 down at the bottom, the name, American
12 Petroleum Institute, with the address of the
13 Department of Safety at 50 West 50th Street
14 in New York City?

15 A. Yes.

16 Q. Now, I'd like to direct your
17 attention to page three of this American
18 Petroleum Institute document from 1948. Do
19 you see on this page, in the left-hand
20 column, towards the bottom there is a title,
21 "Two Chronic Effects"? On the bottom
22 left-hand column?

23 A. Yes.

24 Q. And the first thing it says,

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01 in that -- in this section of the report is,
02 "Chronic benzene poisoning results from
03 repeated or continuous exposure to
04 relatively low concentrations of benzene
05 vapor." Do you see that?

06 A. Yes.

07 Q. Have you seen any indication
08 that American Mineral Spirits Company,
09 Ashland, Inc., or any other supplier of the
10 benzol acetone blend told The Savogran
11 Company that chronic benzene poisoning
12 results from repeated or continuous exposure
13 to relatively low concentrations of benzene
14 vapor?

15 MS. BONNEVILLE: Objection.

16 Calls for speculation.

17 THE WITNESS: No.

18 BY MR. DuPONT:

19 Q. The document continues to read
20 that, "The level and degree of exposure,
21 meaning exposure to benzene, necessary to
22 produce poisoning apparently vary widely."

23 Have you seen any evidence
24 that American Mineral Spirits Company or

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01 Ashland provided that information to The
02 Savogran Company?

03 A. No.

04 Q. Now, if you continue to the
05 right-hand column there's a paragraph that
06 begins with, "The bone marrow where blood is
07 formed may be hypoplastic, fairly normal in
08 appearance, or hyperplastic." Do you see
09 that sentence?

10 A. Yes.

11 Q. And it continues to read,
12 "Abnormal forms for young cells may abound
13 and reasonably well documented instances of
14 the development of leukemia as a result of
15 chronic benzene exposure have been cited."
16 Do you see where that's written in this
17 American Petroleum Institute document?

18 A. Yes.

19 Q. And have you seen any evidence
20 that Ashland, Inc., or American Mineral
21 Spirits Company provided that information to
22 The Savogran Company?

23 MS. BONNEVILLE: Objection,
24 calls for speculation.

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01 THE WITNESS: No.

02 BY MR. DuPONT:

03 Q. All right. And this document
04 was written in 1948, which is about 25 years
05 before we have record of Ashland, Inc., and
06 American Mineral Spirits Company, selling
07 the benzol acetone blend to The Savogran
08 Company. Right?

09 A. Yes.

10 Q. If you continue to -- the page
11 on the exhibit has a number four on the top
12 left-hand corner.

13 A. Got it.

14 Q. See, there's a Section 3,
15 "Safe limits" on the bottom left-hand
16 corner?

17 A. Yes.

18 Q. And this section begins by
19 referring to the American Standards
20 Association and most states setting an
21 arbitrary limit of a hundred part per
22 million as the maximum permissible benzene
23 concentration for workers exposed during an
24 eight hour day in 1948?

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01 A. Yes.

02 Q. And it refers to some other
03 states, including Massachusetts and Oregon,
04 having set a limit of 75 part per million,
05 where New York considers a 50 part per
06 million as the highest permissible level?

07 A. Yes.

08 Q. But, nonetheless, what the
09 American Petroleum Institute continues to
10 write is that, "Inasmuch as the body
11 develops no tolerance to benzene, and there
12 is a wide variation in individual
13 susceptibility, it is generally considered
14 that the only absolutely safe concentration
15 for benzene is zero." Do you see that?

16 A. Yes.

17 Q. Have you seen anything from
18 Ashland or American Mineral Spirits Company
19 telling The Savogran Company that because
20 there is no tolerance to benzene in the
21 human body, and because there's wide
22 variation in how people are susceptible to
23 exposure to benzene, the only absolutely
24 safe concentration for benzene is zero?

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01 A. No.

02 Q. We continue on this page.

03 There's a section with a Roman numeral five,
04 "Treatment of benzene poisoning." Do you
05 see that?

06 A. Yes.

07 Q. In the second paragraph it's
08 written, in this American Petroleum
09 Institute document, "Chronic benzene
10 poisoning is extremely refractory to
11 treatment." And I'll represent to you that
12 refractory means resistant in this instance.
13 And continues to write, "Practically all
14 therapeutic measures attempted have failed,
15 although transfusions are at least
16 temporarily useful in combating severe
17 anemia."

18 Was that information ever
19 provided to The Savogran Company in the
20 records that you've seen or the people that
21 you've spoken with? Was that ever provided
22 by Ashland or American Mineral spirits
23 Company?

24 A. No.

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01 Q. This information that I read
02 to you from The American Petroleum
03 Institute's document prepared 25 years
04 before we have record of Ashland, an
05 American Mineral Spirits Company, selling
06 the 90 percent benzol, ten percent acetone
07 blend to The Savogran Company, don't you
08 think it would have been responsible for
09 American Mineral Spirits Company and
10 Ashland, Inc. to disclose that information
11 to its customers of benzene?

12 MR. LEDGER: I'm going to
13 object. It calls for speculation.

14 MS. BONNEVILLE: Objection,
15 calls for speculation.

16 MR. LEDGER: Calls for
17 speculation. Calls for opinion
18 testimony.

19 BY MR. DuPONT:

20 A. Let me back up. I'll withdraw
21 the question because of the objections.

22 This information that's
23 provided in the American Petroleum
24 Institute's document drafted 25 years before

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01 we have record of Ashland and American
02 Mineral Spirits Company selling the 90
03 percent benzene, ten percent acetone blend
04 to The Savogran Company, isn't that
05 information that The Savogran Company would
06 have liked to have known in deciding whether
07 or not to purchase benzene for use in its
08 products?

09 MR. LEDGER: Objection, calls
10 for speculation.

11 MS. BONNEVILLE: Objection.

12 THE WITNESS: Yeah, I can't
13 comment on anything from 1949, or
14 even what the former owners might
15 have been considering in 1968.

16 BY MR. DuPONT:

17 Q. Okay. So, you don't know what
18 was going on in the heads of the owners of
19 The Savogran Company in the sixties and
20 seventies?

21 A. Yes.

22 Q. All right. But, as a general
23 practice, would you agree with me that as a
24 manufacturer of products containing

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01 chemicals, it would be helpful for The
02 Savogran Company to receive as much
03 information as it could from its suppliers
04 about the health hazards of the chemicals?

05 MR. LEDGER: Objection. Calls
06 for speculation.

07 THE WITNESS: Yes, it would be
08 helpful.

09 BY MR. DuPONT:

10 Q. Because The Savogran Company
11 was relying upon its suppliers as one source
12 of information on the health hazards of the
13 chemicals it used in order evaluate the use
14 of those chemicals and then prepare
15 warnings?

16 MS. BONNEVILLE: Objection,
17 calls for speculation.

18 THE WITNESS: Again, we have
19 no way of knowing what was going on
20 in the sixties, fifties. You know,
21 that's a long time ago.

22 BY MR. DuPONT:

23 Q. Was it the practice of The
24 Savogran Company, in 1987, when you began

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01 with it, to consider information received
02 from suppliers of chemicals in determining
03 how The Savogran Company used chemicals and
04 what warnings it gave for its products?

05 A. Yes.

06 Q. And was it your understanding
07 that the way the system was supposed to work
08 was that the chemical manufacturer, like
09 Ashland and American Mineral Spirits
10 Company, was supposed to provide what it
11 knew about the hazards of the product to
12 Savogran so that it can, in turn, either
13 incorporate that information into its
14 warnings or make the decision not to use the
15 chemical?

16 A. I'm certainly --

17 MS. BONNEVILLE: Objection,
18 calls for speculation.

19 THE WITNESS: I'm certainly
20 not qualified to even understand or
21 know how the processes of, you know
22 -- of notifications or assimilation
23 of information happened in those
24 days. Certainly a different time now

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01 than it was back then, you know.

02 Yeah.

03 BY MR. DuPONT:

04 Q. I'm going to hand to you a
05 document that I'm marking as Exhibit 12 to
06 your deposition.

07 - - -

08 (Whereupon the document was
09 marked, for identification purposes,
10 as Monique Exhibit Number 12.)

11 - - -

12 BY MR. DuPONT:

13 Q. Exhibit 12 is a chapter on the
14 aromatic hydrocarbons from the textbook,
15 "Occupational Medicine and Industrial
16 Hygiene" by Rutherford T. Johnstone, dated
17 1948. Do you see that?

18 A. Yes.

19 Q. And it indicates here that
20 Rutherford T. Johnstone is a consultant in
21 industrial health, lecturer, at the
22 University of California, Los Angeles, and
23 formerly the Assistant Professor of
24 Medicine, University of Pittsburgh School of

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01 Medicine, and formerly Director of
02 Department of Occupational Diseases at
03 Golden State Hospital. Do you see that?

04 A. Yes.

05 Q. And if you turn to the third
06 page of the exhibit, it has the page number
07 190 of the chapter at the bottom?

08 A. Yes.

09 Q. See, there's a section here on
10 benzol?

11 A. Yes.

12 Q. And it's within the chapter on
13 aromatic hydrocarbons. And benzene, or
14 benzol is an aromatic hydrocarbon. Right?

15 A. Yes.

16 Q. The first paragraph provides
17 some physical description of benzene. It
18 says it's a coal tar product, which should
19 always be referred to as benzol in order to
20 distinguish it from the petroleum benzine,
21 spelled B-E-N-Z-I-N-E, of the aliphatic
22 hydrocarbons. Do you see that?

23 A. Yes.

24 Q. And it provides information on

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01 its odor, which is described as not
02 unpleasant. It says, it's a colorless
03 liquid. And it has a boiling temperature of
04 80 degrees Celsius and solidifies at 5.5
05 degrees Celsius. Do you see that?

06 A. Yes.

07 Q. And, in fact, you saw
08 reference in some of the Savogran purchase
09 records of an addition possibly of toluene
10 to the blend to prevent it from freezing?

11 A. Yes.

12 Q. The second paragraph in this
13 chapter from Rutherford T. Johnstone's 1948
14 textbook says, "While the use of benzol in
15 industry has been considerably reduced in
16 recent years, the incident of benzol
17 poisoning is still fairly frequent." Do you
18 see that?

19 A. Yes.

20 Q. Reading this, at least in
21 Rutherford T. Johnstone's opinion, there was
22 already a reduction of the use of benzol in
23 industry. Do you agree with that?

24 A. What? Simply with what it

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01 says?

02 Q. Sure.

03 A. Yes.

04 Q. All right. But despite the
05 reduction in the use of benzene in industry,
06 there were still incidents of benzene
07 poisoning happening fairly frequently,
08 according to this document?

09 MR. LEDGER: Object. Calls
10 for speculation. The document speaks
11 for itself.

12 THE WITNESS: Yes.

13 BY MR. DuPONT:

14 Q. This chapter -- this paragraph
15 in the chapter, it continues to write, "Too
16 often is benzol hidden under a trade name or
17 is carelessly substituted for less toxic
18 solvents." Do you see that?

19 A. Yes.

20 Q. So, what this doctor is
21 indicating is that it would be careless to
22 use benzol in place of less toxic solvents.
23 Do you agree with that?

24 MR. LEDGER: Do we -- does he

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01 agree that the document states that?

02 MR. DuPONT: Yes.

03 MR. LEDGER: Okay.

04 THE WITNESS: Yes.

05 BY MR. DuPONT:

06 Q. Now, are you aware of The
07 Savogran Company ever hiring any
08 professionals in the area of industrial
09 hygiene, toxicology or occupational medicine
10 during the 1960s or 1970s to teach it about
11 the health hazards of benzene?

12 A. There is nothing in the
13 record.

14 Q. Are you aware of, through your
15 review of the record and speaking with any
16 employees of The Savogran Company, whether
17 or not its suppliers, like Ashland, like
18 American Mineral Spirit Company, ever asked
19 The Savogran Company whether they understood
20 about the health hazards of the benzene that
21 were reflected in The American Petroleum
22 Institute document or this textbook by
23 Rutherford T. Johnstone?

24 MS. BONNEVILLE: Objection,

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01 calls for speculation.

02 THE WITNESS: There's nothing

03 in the record.

04 BY MR. DuPONT:

05 Q. Do you see anything, either in
06 the records or from your conversation with
07 people at The Savogran Company, that
08 American Mineral Spirits Company or Ashland,
09 Inc. sat down the Savogran Company's
10 employees and said, just tell us what you do
11 know about the health hazards of benzene
12 before you start using the chemical?

13 MS. BONNEVILLE: Objection,
14 calls or speculation.

15 THE WITNESS: There's nothing
16 in the record now.

17 BY MR. DuPONT:

18 Q. By the way, do you know what
19 was more expensive, benzene or methylene
20 chloride?

21 MR. LEDGER: Vague as to time.

22 BY MR. DuPONT:

23 Q. Let's say in the 1970S, do you
24 know what was more expensive, benzene or

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01 methylene chloride?

02 A. That I don't.

03 - - -

04 (Whereupon the document was
05 marked, for identification purposes,
06 as Monique Exhibit Number 13.)

07 - - -

08 BY MR. DuPONT:

09 Q. I'm going to hand to you
10 Exhibit 13. Exhibit 13 is a November 30,
11 1954 letter from John H. Foulger M.D., the
12 Director of Medical Research. And we can
13 tell it's from the Director of Medical
14 Research at DuPont by looking at the second
15 paragraph, where it says, "In the DuPont
16 Company." Do you see that?

17 A. Yes.

18 Q. All right. So it's John E.
19 Foulger, M.D., the Director of Medical
20 Research at the Dupont Company, writing to a
21 Mr. Mark -- excuse me -- Mr. Dewey Mark of
22 Organic Chemicals Division of the Cosden
23 Petroleum Corporation?

24 A. Yes.

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01 Q. And in November of 1954, what
02 Dr. Foulger is writing to Mr. Mark is that
03 he's not aware of any government, state or
04 municipal ordinance restricting or
05 recommending restrictions of benzene in the
06 manufacture of paints, lacquers, enamels and
07 thinners. But, of course, there are many
08 regulations concerning its proper label. Do
09 you see that paragraph?

10 A. Yeah.

11 Q. And Dr. Foulger continues to
12 write that, "In the Dupont Company, however,
13 we consider benzene to be so hazardous that
14 we try to avoid its use as far as possible."
15 Do you see that recommendation being made by
16 Dr. Foulger?

17 A. Yes.

18 Q. Did you ever see any
19 information from Ashland or American Mineral
20 Spirits Company recommending that the use of
21 benzene be avoided as far as possible being
22 provided to Savogran?

23 MS. BONNEVILLE: Objection,
24 calls for speculation.

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01 THE WITNESS: No.

02 BY MR. DuPONT:

03 Q. And it continues to read, with
04 reference to Dr. Foulger, "I personally
05 recommend that it," meaning benzene, "be
06 eliminated from all paint removers or
07 paints, lacquers, enamels and thinners
08 because, in my opinion, it should only be
09 used under circumstances in which there is
10 very thorough ventilation to prevent workers
11 inhaling benzol, and constant medical
12 supervision of those workers to make certain
13 that they do not develop anemia." Do you
14 see that?

15 A. Yes.

16 Q. Did you see any evidence in
17 the records you reviewed, or the folks that
18 you spoke to from Savogran, that Ashland or
19 American Mineral Spirit Company recommended
20 that benzene be eliminated from all paint
21 removers?

22 A. No.

23 Q. Did you see any warning or
24 recommendation from Ashland or American

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01 Mineral Spirits Company that benzene should
02 only be used under circumstances in which
03 there is very thorough ventilation to
04 prevent workers inhaling benzol?

05 A. No.

06 MS. BONNEVILLE: Calls for
07 speculation.

08 BY MR. DuPONT:

09 Q. Did you see any evidence that
10 Ashland or American Mineral Spirits Company
11 recommended that there be constant medical
12 supervision of those workers to make certain
13 that they do not develop anemia?

14 A. No.

15 Q. The letter from Dr. Foulger at
16 DuPont continues to read, "Benzol is a very
17 insidious poison, and once bone marrow
18 damage has been produced by it, the clinical
19 condition is almost impossible to treat
20 successfully. I believe that there are very
21 few instances in which benzol cannot be
22 replaced by other less hazardous solvents."
23 Do you see that?

24 A. Yes.

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01 Q. Did you see any evidence in
02 records or folks that you spoke to from
03 Savogran that Ashland or American Mineral
04 Spirits Company advised that benzol is a
05 very insidious poison, and once it causes
06 bone marrow damage, the clinical condition
07 is almost impossible to treat successfully.

08 MS. BONNEVILLE: Calls for
09 speculation.

10 THE WITNESS: No.

11 BY MR. DuPONT:

12 Q. Did you see any evidence from
13 the records that you reviewed or the folks
14 that you spoke with at The Savogran Company
15 that Ashland or American Mineral Spirits
16 Company told Savogran that there are very
17 few instances in which benzol cannot be
18 replaced by other, less hazardous solvents?

19 MS. BONNEVILLE: Objection.
20 Calls for speculation.

21 THE WITNESS: No.

22 BY MR. DuPONT:

23 Q. And you saw in the Savogran
24 formulas that The Savogran Company was able

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

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01 to replace benzene with methylene chloride;
02 correct?

03 A. Yes.

04 - - -

05 (Whereupon the document was
06 marked, for identification purposes,
07 as Monique Exhibit Number 14.)

08 - - -

09 BY MR. DuPONT:

10 Q. I'm going to hand to you
11 Exhibit 14 to your deposition. Exhibit 14
12 is a May 16, 1967 letter from an Edmund
13 Kornowicz, Superintendent at the State of
14 Illinois Department of Labor, Division of
15 Safety, Inspection and Education. Do you
16 see that?

17 A. Yes.

18 Q. And Mr. Kornowicz is writing a
19 letter to a gentleman at Handschy Chemical
20 Company on May 16, 1967. And there's
21 reference in this letter to an industrial
22 hygiene engineer from the Department of
23 Labor making an investigation of this
24 company, Handschy, and finding that they're

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation and the witness lacks personal knowledge.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, incomplete hypothetical and calls for expert opinion. Objection based on inadmissible hearsay.

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01 using a very hazardous solvent in the
02 products Hancolite and Special Type Wash.
03 Do you see that?
04 A. Yes.
05 Q. And they identify in this
06 letter the solvent in question to be benzene
07 or benzol. Do you see that?
08 A. Yes.
09 Q. And the State of Illinois is
10 advising this company that's using benzene
11 or benzol in its product that chronic low
12 level exposures to benzene or benzol may
13 produce alterations of the blood elements
14 most commonly resulting in anemia,
15 leukopenia and thrombocytopenia. Do you see
16 where it says that?
17 A. Yes.
18 Q. And the State of Illinois,
19 Department of Labor continues to advise that
20 benzene is a suspected carcinogenic agent.
21 And that all forms of acute and chronic
22 leukemia have been observed in workers with
23 benzene intoxication. Do you see where
24 that's written?

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, incomplete hypothetical and calls for expert opinion. Objection based on inadmissible hearsay.

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01 A. Yes.

02 Q. All right. Now, are you aware
03 of The Savogran Company ever asking the
04 State of Illinois what it knew about the
05 health hazards of benzene?

06 MR. LEDGER: Calls for
07 speculation.

08 THE WITNESS: And nothing
09 found in the record.

10 BY MR. DuPONT:

11 Q. Do you have any reason to
12 believe that if The Savogran Company
13 consulted the State of Illinois, Department
14 of Labor about the health hazards of
15 benzene, they would not have received the
16 same information from it?

17 MR. LEDGER: Objection, calls
18 for speculation.

19 THE WITNESS: There's nothing
20 in the record.

21 BY MR. DuPONT:

22 Q. So, sitting here today, can
23 you identify any evidence or any reason that
24 you have to believe that if The Savogran

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, incomplete hypothetical and calls for expert opinion. Objection based on inadmissible hearsay.

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01 Company asked the State of Illinois about
02 benzene in 1967, it would not have been told
03 that benzene is a suspected carcinogenic
04 agent. That all forms of acute and chronic
05 leukemia have been observed in workers with
06 benzene intoxication?

07 MR. LEDGER: Objection, calls
08 for speculation, lacks foundation.

09 THE WITNESS: There's nothing
10 in the record to say whether they did
11 or they didn't.

12 BY MR. DuPONT:

13 Q. And if we continue to read
14 down this letter, in the next paragraph,
15 "The State of Illinois is urging this
16 Handschy Chemical Company to substitute this
17 solvent benzene for a less toxic material to
18 reduce the health hazard to a minimum. Do
19 you see that?

20 A. Yes.

21 Q. Do you have any reason to
22 believe that if The Savogran Company
23 consulted with the Department of Labor in
24 the State of Illinois by 1967, they would

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 not have been told that they should
02 substitute benzene out of the Savogran
03 Kutzit product?

04 MR. Ledger: Calls for
05 speculation.

06 THE WITNESS: There's nothing
07 in the record to suggest whether they
08 did or did not ask.

09 BY MR. DuPONT:

10 Q. Well, can you identify for me
11 any reason that you have to believe that the
12 Department of Labor and the State of
13 Illinois would not have provided the
14 information in this May 16, 1967 letter to
15 The Savogran Company, had it been requested?

16 MR. LEDGER: Calls for
17 speculation.

18 THE WITNESS: Yeah, I wouldn't
19 know.

20 - - -

21 (Whereupon the document was
22 marked, for identification purposes,
23 as Monique Exhibit Number 15.)

24 - - -

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 BY MR. DuPONT:

02 Q. I'm handing to you Exhibit 15
03 to your deposition. Exhibit 14 and 15 are
04 related in that here, in Exhibit 15, there's
05 a May 15, 1967 letter to the Handschy
06 Chemical Company from the State of Illinois,
07 Department of labor. But this time the
08 State of Illinois, through Mr. Edmund
09 Kornowicz, is advising that Handschy
10 Chemical Company was in violation of
11 Illinois Health and Safety Act, and health
12 and safety rules through its use of benzene.

13 A. Yes.

14 Q. And so, reading this letter
15 and the record attached, we can determine
16 that there were actually laws in place in
17 the State of Illinois that prohibited the
18 use of benzene in certain ways.

19 MR. LEDGER: Objection, calls
20 for speculation. He's asking for
21 your knowledge regarding law.

22 THE WITNESS: Oh, that was
23 another question.

24 MR. DuPONT: Yes.

Savogran
objects to the
designation on
the grounds that
is inadmissible
hearsay.



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01 THE WITNESS: Yeah.

02 BY MR. DuPONT:

03 Q. Reading this letter, we can
04 interpret that there were laws in place in
05 the State of Illinois prohibiting the use of
06 benzene in the way it was being used by the
07 Handschy Chemical Company?

08 MR. LEDGER: Calls for
09 speculation.

10 THE WITNESS: Yeah, I'm not
11 sure.

12 MR. HERNAN: Calls for legal
13 opinion.

14 BY MR. DuPONT:

15 Q. I know you're not familiar
16 with what the laws were in the State of
17 Illinois, but reading this letter, the State
18 of Illinois is advising the Handschy
19 Chemical Company that it's in violation of
20 Illinois Health and Safety Act, and health
21 and safety rules. And if we continue to
22 read through the attachment here, it refers
23 to how benzene was being used by the
24 Handschy Chemical Company. Do you agree

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01 with that?

02 A. Yes.

03 Q. All right. So, read together,
04 we can interpret this letter to mean that
05 the way that the Handschy Chemical Company
06 was using the benzene was in violation of
07 the Illinois Health and Safety Act and the
08 health and safety rules of Illinois?

09 MR. LEDGER: Objection. Calls
10 for speculation. Calls for expert
11 opinion, legal opinion.

12 THE WITNESS: Yeah, I'm not
13 sure.

14 BY MR. DuPONT:

15 Q. If we turn to the second page
16 of the exhibit. There is a State of
17 Illinois, Department of Labor Safety
18 Inspection Unit form that's been filled out.
19 Do you see that?

20 A. Yes.

21 Q. And, reading through the form,
22 there's a section where it says, "Following
23 is a list of violations of the rules and
24 regulations promulgated by the Illinois

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 Industrial Commission by authority of the
02 Health and Safety Act, Chapter 48, Illinois
03 revised statute, 1947. Do you see that?

04 A. Yes.

05 Q. And so, this is where the
06 State of Illinois is listing what violations
07 of the rules and regulations and the Health
08 and Safety Act it found?

09 A. Yes.

10 Q. And underneath that section,
11 and continuing on to the second page of
12 form, there's an item number six from the
13 list of violations. Do you see that?

14 A. Yes.

15 Q. And what it says, as the sixth
16 violation, is, "Provide a substitute cleaner
17 eliminating the use of benzene, in
18 parentheses, benzol, for cleaning of pans
19 and equipment to minimize the harmful effect
20 of this solvent, as per part F, Section 3,
21 rules 1, 2 and 7K, and Section 3 of the
22 Health and Safety Act." Do you see that?

23 A. Yes.

24 Q. So what the State of Illinois,

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 Department of Labor is telling the Handschy
02 Chemical Company here is that they're in
03 violation of the Illinois law by using
04 benzene or benzol for cleaning of pans and
05 equipment. And they had to stop doing that
06 to minimize the harmful effects of that
07 solvent.

08 MR. LEDGER: Objection. Calls
09 for speculation. The document speaks
10 for itself. I think it's also
11 outside the scope of the Deposition
12 Notice. You're now asking him to
13 form opinions based on the
14 interpretation of documents. It
15 calls for an expert witness opinion.
16 He's not designated as an expert
17 witness.

18 THE WITNESS: I'm not sure
19 what it means.

20 BY MR. DuPONT:

21 Q. So, reading this, where it
22 says, "Provide a substitute cleaner
23 eliminating the use of benzene, in
24 parentheses, benzol for cleaning of pans and

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 equipment to minimize the harmful effects of
02 this solvent. As per part F, Section 3,
03 Rules 1, 2 and 7K and Section 3 of the
04 Health and Safety Act, you don't interpret
05 that to mean that using benzene or benzol to
06 clean the pans and equipment was a violation
07 of those sections of Illinois Law?

08 MR. LEDGER: Objection, calls
09 for speculation. Mr. Monique has no
10 knowledge of the state of law back in
11 Illinois back in the 1950s or '60s.
12 Calls for an expert opinion. It's
13 also outside the scope of the
14 deposition Notice.

15 THE WITNESS: It sounds like a
16 recommendation.

17 BY MR. DuPONT:

18 Q. And it's a recommendation that
19 refers to specific sections of the Illinois
20 law, including its Health and Safety Act?

21 MR. LEDGER: It calls for
22 speculation. The document speaks for
23 itself, he can't testify as to
24 whether it's accurately stating the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 law.

02 THE WITNESS: Yes.

03 BY MR. DuPONT:

04 Q. All right. And you say it
05 sounds like a recommendation, but it's
06 listed in the section of the form where
07 there are violations of the rules and
08 regulations promulgated by the Illinois
09 Industrial Commission by authority of the
10 Health and Safety Act. So, it's listed
11 under the section where there's -- the
12 company's been found to be in violation of
13 Illinois law. Do you see that?

14 MR. LEDGER: Objection. The
15 document speaks for itself. It calls
16 for speculation. Calls for expert
17 opinion. It's outside the scope of
18 the deposition Notice. He's supposed
19 to testify about what he knows and
20 it's a fact deposition. And you keep
21 asking him questions on how to form
22 opinions and to interpret documents
23 that he didn't create.

24 MR. DuPONT: Counsel, you're

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 going beyond what's permissible with
02 an objection.

03 MR. LEDGER: Let me finish.

04 The documents that were created
05 before he was born and they describe
06 laws that he has no familiarity with.

07 BY MR. DuPONT:

08 Q. So, the fact that State of
09 Illinois is telling Handschy that they're in
10 violation of the Illinois Health and Safety
11 Act and Health and Safety rules, and listing
12 as one of the violations being the use of
13 benzene to clean pans and equipment, that's
14 not an indication to you that it was against
15 the law in Illinois to use benzene for that
16 purpose?

17 MR. LEDGER: Objection, calls
18 for speculation. Calls for expert
19 witness opinion. Testimony calls for
20 -- the document speaks for itself.
21 He's not here to form opinions based
22 on old documents.

23 THE WITNESS: Well, it's
24 certainly in violation of some --

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 some regulations. I think we can
02 agree on that. Whatever they might
03 be.

04 - - -
05 (Whereupon the document was
06 marked, for identification purposes,
07 as Monique Exhibit Number 16.)

08 - - -

09 BY MR. DuPONT:

10 Q. I'm going to hand to you
11 Exhibit 16 to your deposition. And
12 Exhibit 16 is a document published by the
13 U.S. Department of Health, Education and
14 Welfare Public Health Service, called
15 "Occupational Diseases, a Guide to their
16 Recognition", and it's dated 1964. If you
17 look to the fourth page you can see the date
18 there. Do you see that?

19 A. Yes.

20 Q. And if you flip to the page
21 that has page number 87 in the top
22 right-hand corner, do you see there's a
23 section on benzene?

24 A. Yes.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 Q. And under benzene it says,
02 "harmful effects"?

03 A. Yes.

04 Q. And the second paragraph under
05 that section on benzene begins with the
06 sentence, "Chronic low level exposures may
07 produce alterations of the blood elements
08 most commonly resulting in anemia,
09 leukopenia and thrombocytopenia. Do you see
10 that?

11 A. Yes. Yes. I got it.

12 Q. If you turn to the next page,
13 page 88. The last two sentences of this
14 section on the health hazards -- of the
15 health effects of benzene read. "Benzene is
16 a suspected carcinogenic agent. All forms
17 of acute and chronic leukemia have been
18 observed in workers with benzene
19 intoxication." Do you see that?

20 A. Yes.

21 Q. And that's the same thing that
22 was written in the May 16, 1967 letter from
23 the State of Illinois, Department of Labor
24 that we marked as Exhibit 14 to your

Savogran
objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 deposition?

02 A. Okay.

03 Q. Do you want to look and
04 confirm that?

05 A. Yes, yes.

06 Q. All right. Now, are you aware
07 of The Savogran Company, during the 1960s
08 and 1970s, ever consulting with the United
09 States Government's Public Health Service to
10 learn about the health hazards of benzene?

11 A. There's nothing in the record.

12 Q. Is this information with the
13 United States Public Health Service's
14 document about the health effects of benzene
15 information that was available to The
16 Savogran Company, if it had decided to
17 consult with the federal government?

18 MR. LEDGER: Objection, calls
19 for speculation.

20 THE WITNESS: Yeah, I have no
21 idea.

22 BY MR. DuPONT:

23 Q. Based on what was written by
24 the United States Public Health Service and

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion. Objection based on inadmissible hearsay.

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01 the State of Illinois, Department of Labor,
02 about benzene being a suspected carcinogenic
03 agent, and all forms of acute and chronic
04 leukemia having been observed in workers
05 with benzene intoxication, would that
06 indicate to you that a primary health hazard
07 of exposure to benzene was indeed leukemia?

08 MR. LEDGER: Objection, lacks
09 foundation. Calls for speculation.
10 Mr. Monique has not been designated
11 as an expert in this case. He is
12 here to give fact witness -- the
13 deposition is the person most
14 knowledgeable. You're really going
15 outside the scope of the Deposition
16 Notice at this point.

17 THE WITNESS: Yeah, I don't
18 know anything about the health
19 effects of benzene.

20 What time is it?

21 MR. DuPONT: 2:46. Do you
22 need to take a break?

23 THE WITNESS: Yeah, let's take
24 a break.

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01 VIDEO TECHNICIAN: Time is
02 2:47, we're off the record.
03 (Whereupon there was a recess
04 in the proceeding.)
05 VIDEO TECHNICIAN: This is the
06 beginning of media number four.
07 We're back on the record. The time
08 is 2:54.

09 BY MR. DuPONT:

10 Q. Mr. Monique, I wanted to ask
11 you some questions about the Kutzit labels.
12 Let's begin with Exhibit 5, if you don't
13 mind, please.

14 A. No, not at all.

15 Q. You got it in the pile in
16 front of you.

17 A. Yep, got it.

18 Q. Okay. Now, do you know -- do
19 you have any information about what went
20 into the thought process in deciding what
21 words and symbols were used on the Kutzit
22 labels in the 1960s and 1970s?

23 A. So, I can tell you, when I
24 started in 1987, they were using the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 labeling guide that was published by the
02 National Paint Coatings Association.

03 Q. Okay. But as to what -- how
04 Savogran or whoever else prepared the labels
05 for the Kutzit product in the sixties and
06 seventies, do you know what basis they used
07 to decide what words or symbols they were
08 going to put on or not put on labels?

09 A. No. No. I would assume that
10 it, you know, goes back to the National
11 Paint Coatings Association --

12 Q. Okay.

13 A. -- labeling guide.

14 Q. All right. Looking at Exhibit
15 5, this is the November 19, 1963 proof for
16 the Kutzit label?

17 A. Yes.

18 Q. And on the front of the
19 container it states that the product has
20 been laboratory tested for quality?

21 A. Uh-huh, yes.

22 Q. And reading that statement,
23 laboratory tested for quality, does that
24 lead the user to believe that it is indeed a

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 product that has been tested and that it's a
02 quality product?

03 MR. LEDGER: Objection, calls
04 for speculation.

05 THE WITNESS: Yes.

06 BY MR. DuPONT:

07 Q. And is that information that a
08 user of the Kutzit product could consider in
09 determining whether it's a safe product or
10 not?

11 MR. LEDGER: Calls for
12 speculation.

13 THE WITNESS: I wouldn't
14 interpret it as safe. More
15 consistency in like performance,
16 yeah.

17 BY MR. DuPONT:

18 Q. Do companies sometimes test
19 their product for safety?

20 A. Yes.

21 Q. And by indicating that the
22 product has been laboratory tested for
23 quality, could that be interpreted as
24 meaning safety is one of the quality

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 aspects?

02 MR. LEDGER: Objection, calls
03 for speculation, calls for expert
04 opinion. If you know how people
05 interpret it, then you can go ahead.
06 Don't speculate.

07 THE WITNESS: To me personally
08 that means consistency. It's always
09 going to work the same, behave the
10 same every time, not safety.

11 BY MR. DuPONT:

12 Q. On the right-hand side of the
13 label, is that the back panel of the
14 container?

15 A. The right-hand side?

16 Q. Yes.

17 A. Yes.

18 Q. And at the top of the back
19 panel it has the word Kutzit on it; right?

20 A. Yes.

21 Q. And underneath it there's some
22 description of how the product works and how
23 it can be used?

24 A. Yes.

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01 Q. And it's described to be a
02 faster acting liquid type for quick
03 stripping of paint, lacquer, enamel, shellac
04 and varnish?

05 A. Yes.

06 Q. And it continues to say that
07 it's especially useful on horizontal and
08 flat surfaces?

09 A. Yes.

10 Q. And then on upright, rounded
11 or thickly coated surfaces it recommends the
12 use of the Strypeeze Semi-Paste?

13 A. Yes.

14 Q. Now, the fact that the product
15 was advertised as a fast working product, or
16 a faster acting product, would that lead a
17 user to believe that it would help them get
18 a job done quicker than some other paint
19 removers?

20 MR. LEDGER: Objection. Calls
21 for speculation. If you feel you
22 have reason to believe how a user is
23 going to interpret the document, then
24 go ahead. But if you don't, don't

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01 speculate.

02 THE WITNESS: Yes.

03 BY MR. DuPONT:

04 Q. And underneath that section
05 there are three bullet points -- four bullet
06 points, excuse me, the first of which
07 directs the user of the Kutzit product to be
08 sure to apply the thickest possible coat of
09 remover by flowing it on with a loaded brush
10 in one direction only?

11 A. Yes.

12 Q. All right. And your
13 understanding that, being a chemist, the
14 more product -- Kutzit product that is
15 applied, the more solvent chemical inside
16 the product is going to evaporate off of it?

17 MR. LEDGER: Calls for
18 speculation. Incomplete
19 hypothetical.

20 THE WITNESS: What was the
21 question again?

22 BY MR. DuPONT:

23 Q. Sure. Given your background
24 in chemistry, would you agree with me that

Savogran
objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, an incomplete hypothetical and calls for an expert opinion.

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01 the greater volume of the Kutzit product
02 that is applied to the surface, the greater
03 volume of solvent vapors will come off of
04 the product?

05 MR. LEDGER: Same objection.

06 THE WITNESS: Not necessarily.

07 Because you know they -- you lay it
08 down in one direction because you're
09 trying to get the wax to form that
10 layer, and that retards the
11 evaporation.

12 BY MR. DuPONT:

13 Q. Okay, good.

14 A. Yes.

15 Q. But eventually all that
16 solvent's got to evaporate off for the
17 product to work. Right?

18 A. Right.

19 Q. All right.

20 A. And the other -- you know,
21 Kutzit was a liquid. So, I mean, it's kind
22 of a silly statement there, you know.
23 Thickest possible coat, certainly Strypeeze
24 is very thick and clings to upright and

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01 rounded surfaces, but Kutzit, being a
02 liquid, you know, is thin.

03 Q. All right. Well, the
04 directions back in 1963 --

05 A. Yeah, yeah.

06 Q. -- and we'll look at the same
07 ones in 1969 -- do say to apply it in the
08 thickest possible coat. Correct?

09 A. Yes.

10 Q. And when the Kutzit product is
11 applied to the surface that it has paint or
12 lacquer or enamel on, it's going to eat into
13 that -- that surface and kind of form a --
14 form a sludge with the paint?

15 MR. LEDGER: Objection. Calls
16 for speculation. Incomplete
17 hypothetical.

18 THE WITNESS: Yes.

19 BY MR. DuPONT:

20 Q. All right. In fact, if we
21 look at the third bullet point down, what it
22 says is, "When old finish is completely
23 softened, take away sludge with number two
24 coarse steel wool or scraper. Let Kutzit do

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 the work for you."

02 A. Yes.

03 Q. So what happens is that the
04 Kutzit mixes with the paint, lacquer or
05 enamel, and by dissolving it becomes kind of
06 a sludge material?

07 A. Yes.

08 Q. And when you think of sludge
09 you think of a thicker material. Right?

10 A. Yes.

11 Q. All right. And then what the
12 Kutzit label advises the user to do is use
13 either a number two coarse steel wool or a
14 scraper to remove that sludge from the
15 surface?

16 A. Yes.

17 Q. And number two coarse steel
18 wool is something that somebody can hold in
19 their hand in order to rub the surface to --
20 to get the sludge off?

21 A. Yes.

22 Q. And towards the bottom of the
23 back panel there's a section on suggestions
24 about using the product.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge and calls for an expert opinion.

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01 A. Yes.

02 Q. And one of the suggestions, it
03 says, is, "To protect your hands, wear
04 cotton lined type of rubber gloves?"

05 A. Yes.

06 Q. All right. And do you know
07 why it is that Savogran made this only a
08 suggestion and not a requirement that gloves
09 be worn with the product?

10 MR. LEDGER: Objection, lacks
11 foundation. Calls for speculation.

12 THE WITNESS: I don't.

13 BY MR. DuPONT:

14 Q. And it continues to read in
15 the next bullet point. Paint remover should
16 not be used on asphalt, linoleum, rubber
17 tires -- rubber tiles or plastic. And to
18 shake well and not smoke while using it.
19 Right?

20 A. Yes.

21 Q. All right. So those are the
22 surfaces that Savogran is advising the user
23 not to use the Kutzit product on?

24 A. Correct.

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01 Q. And there's no cancer warning
02 or aplastic anemia warning on this label;
03 right?

04 MR. LEDGER: Objection, the
05 document speaks for itself.

06 THE WITNESS: No.

07 BY MR. DuPONT:

08 Q. And the user is not told to
09 wear a respirator when working with the
10 product; correct?

11 MR. LEDGER: Same objection.

12 THE WITNESS: Correct.

13 BY MR. DuPONT:

14 Q. And the user is not told that
15 something in the product can be absorbed
16 through human skin; correct?

17 A. Correct.

18 MR. LEDGER: Same objection.

19 BY MR. DuPONT:

20 Q. And they're not told that
21 after being absorbed through the human skin
22 something in the product could poison their
23 blood or bone marrow, fair?

24 MR. LEDGER: Same objection.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 THE WITNESS: Correct.

02 BY MR. DuPONT:

03 Q. Now, if we look at Exhibit 6,
04 that is the February 14, 1969 proof of the
05 Kutzit label. Do you see that?

06 A. Yes.

07 Q. And that contains similar
08 directions in the top of the back panel to
09 be sure to apply the thickest coat possible
10 of remover by flowing it on with a loaded
11 brush in one direction only. Right?

12 A. Yes.

13 Q. And it also advises the user
14 to remove the sludge from the mixture of the
15 product with the coating with a dull
16 scraper?

17 A. Yes.

18 Q. It's not telling the user to
19 use any steel wool anymore? Well, not to
20 remove the sludge at least.

21 MR. LEDGER: Document speaks
22 for itself.

23 BY MR. DuPONT:

24 Q. Instead what it says is, for

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 best results wash -- is that wash doors with
02 sharp -- with steel wool or coarse cloth
03 dipped in mineral spirits or turpentine?

04 MR. LEDGER: Calls for
05 speculation. If you can understand
06 it.

07 THE WITNESS: That's to get
08 rid of the residue.

09 BY MR. DuPONT:

10 Q. Okay. And the type is not --
11 the type is not very clear on this copy.
12 But is that what it reads, for best results
13 wash doors with steel wool or certain thick
14 coarse cloth dipped in mineral spirits or
15 turpentine?

16 A. No, that's not what it says.
17 For best results, wash down -- wash down
18 with steel wool or coarse cloths dipped in
19 mineral spirits or turpentine.

20 Q. Okay. So, it's down, not
21 doors?

22 A. Right. Yep.

23 Q. All right. And if we go down
24 to the bottom of the back panel where the

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 bullet points are. The first bullet point
02 says, "Prepare a work area outdoors or on a
03 concrete floor." Do you see that?

04 A. Yes.

05 Q. The comparison between
06 outdoors or on a concrete floor, do you
07 interpret that to mean that the concrete
08 floor could be inside?

09 MR. LEDGER: Objection, calls
10 for speculation.

11 THE WITNESS: Yeah, I'm not
12 going to interpret that one.

13 BY MR. DuPONT:

14 Q. Would you agree with me that
15 it is reasonable that somebody can interpret
16 this to be a comparison with using the
17 product either outdoors or on a concrete
18 floor inside?

19 MR. LEDGER: Objection. Calls
20 for speculation. Calls for expert
21 opinion.

22 THE WITNESS: That's really a
23 strange one. I've got no opinion on
24 that one. That's actually the first

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 time I've noticed that.

02 BY MR. DuPONT:

03 Q. Because it continues to say,
04 spread newspapers to absorb drippings, which
05 is talking about using it either outdoors or
06 on a concrete floor, and spreading
07 newspapers. Does this appear -- does the
08 concern appear to be the mess that the
09 product will make?

10 MR. LEDGER: Objection, calls
11 for speculation.

12 THE WITNESS: Yeah, I don't
13 know. Sorry.

14 BY MR. DuPONT:

15 Q. Okay. So, spreading
16 newspapers to absorb drippings, that's
17 something that somebody could do to prevent
18 there from being a mess on the floor
19 underneath where the product is used?

20 MR. LEDGER: Calls for
21 speculation.

22 THE WITNESS: Yes.

23 BY MR. DuPONT:

24 Q. Okay. Now, in this version of

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 the label with the proof of February 14,
02 1969, what the next bullet point says is, to
03 protect sensitive skin wear cotton lined
04 type of heavy gloves. Do you see that?

05 A. Yes.

06 Q. And do you know why it was
07 that Savogran suggested that it's only for
08 folks with sensitive skin that they should
09 only wear cotton lined leather -- excuse me
10 -- cotton lined heavy rubber gloves in 1969?

11 MR. LEDGER: Calls for
12 speculation.

13 THE WITNESS: I don't.

14 - - -

15 (Whereupon the document was
16 marked, for identification purposes,
17 as Monique Exhibit Number 17.)

18 - - -

19 BY MR. DuPONT:

20 Q. I'm going to hand to you
21 Exhibit 17 to your deposition. It's Bates
22 Number Savogran 112. It's a May 27, 1966
23 letter From Savogran Pacific Corporation to
24 Mr. Clement Stodder of The Savogran Company.

Savogran objects to the designation on the grounds that it is vague and ambiguous, lacks foundation, assumes facts not in evidence, calls for speculation, the witness lacks personal knowledge, document speaks for itself and calls for an expert opinion.

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01 In this letter, is Savogran Pacific
02 Corporation making reference to paying The
03 Savogran Company royalties on sales of
04 Savogran products?

05 A. Yes.

06 Q. And it refers to paying
07 royalties that correspond to a period of
08 several months?

09 A. They go into sales for a four
10 month period, \$89,834.29.

11 Q. Okay. So, it appears by the
12 date of this letter, in May 27, 1966, that
13 Savogran Pacific Corporation had already
14 been selling Savogran products for four
15 months?

16 A. Not sure.

17 Q. Or at least it was calculating
18 royalties based on the last sales made
19 during the prior four months?

20 MR. LEDGER: Calls for
21 speculation.

22 THE WITNESS: Yeah, I'm not
23 sure.

24 - - -

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01 (Whereupon the document was
02 marked, for identification purposes,
03 as Monique Exhibit Number 18.)

04 - - -

05 BY MR. DuPONT:

06 Q. I'm going to hand to you
07 Exhibit 18. Exhibit 18 is a September 22,
08 1964 letter from Savogran Pacific
09 Corporation to Mr. Clement Stodder with The
10 Savogran Company. Do you see that?

11 A. Yes.

12 Q. All right. And it indicates
13 that on September 22, 1964, Clement Stodder
14 from The Savogran Company, along with the
15 author of the letter, and individuals name
16 Karl and Jack are directors of Savogran
17 Pacific Corporation?

18 A. Okay.

19 Q. Is that correct?

20 A. Yes.

21 Q. Reading further down, is the
22 Karl being referred to the individual listed
23 under "Stock Holdings" as K. G. Johnson?

24 MR. LEDGER: Calls for

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01 speculation.

02 THE WITNESS: I'm sorry, I'm
03 lost.

04 BY MR. DuPONT:

05 Q. Sure the Karl that's listed,
06 that's mentioned in the sentence, "In the
07 meanwhile, the directors are you, me, Karl
08 and Jack," is that Karl -- Karl Johnson,
09 who's also abbreviated as K. G. Johnson?

10 A. Oh, I have no idea.

11 - - -

12 (Whereupon the document was
13 marked, for identification purposes,
14 as Monique Exhibit Number 19.)

15 - - -

16 BY MR. DuPONT:

17 Q. Okay. I'm going to hand to
18 you Exhibit 19. Quickly, Exhibit 19 is a
19 December 11 -- Exhibit 19 is a December 11,
20 1970 letter from Robert Lenk, the Treasurer
21 of Savogran Company, to Karl G. Johnson,
22 vice president of Savogran Pacific
23 Corporation.

24 A. Okay.

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01 Q. All right. Reading these two
02 together -- these two exhibits together,
03 does that indicate to you that the Karl and
04 K. G. Johnson referred to in the September
05 22, 1964 letter that's Exhibit 18 is the
06 same as the Karl G. Johnson, vice president
07 of Savogran Pacific Corporation on
08 Exhibit 19?

09 MR. LEDGER: Calls for
10 speculation.

11 THE WITNESS: Yes.

12 BY MR. DuPONT:

13 Q. All right. So, this September
14 22, 1964 letter indicates that Savogran
15 Boston, that would be The Savogran Company,
16 held 10,000 shares of Savogran Pacific
17 Corporation; is that right?

18 A. Okay.

19 Q. And 10,000 shares, somebody
20 has totaled up the total number of shares
21 and they total fifty thousand. So, Savogran
22 Boston would have been a 20 percent owner of
23 Savogran Pacific Corporation at that period
24 of time?

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01 MR. LEDGER: Calls for
02 speculation.
03 BY MR. DuPONT:
04 Q. Do you agree with that?
05 MR. LEDGER: If you know.
06 THE WITNESS: I don't know.
07 BY MR. DuPONT:
08 Q. Do you agree that that's what
09 this document states?
10 A. Yes.
11 Q. Okay. And there's other
12 individuals listed as stockholders of
13 Savogran Pacific Corporation, the first of
14 which is John McLean. Who is John McLean
15 employed by?
16 A. Who is John McLean employed
17 by?
18 Q. Yes.
19 A. I don't know.
20 Q. Next is Mary Compton. Do you
21 know who Mary Compton was?
22 A. No.
23 Q. All right. Peggy Pavelka. Do
24 you know who Peggy Pavelka was?

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01 A. No.

02 Q. L. A. McLean. Are you
03 familiar with an L.A. McLean being
04 associated with Savogran?

05 A. No.

06 Q. Then there's a Florence Carey.
07 Do you know who Florence Carey was?

08 A. No.

09 - - -

10 (Whereupon the document was
11 marked, for identification purposes,
12 as Monique Exhibit Number 20.)

13 - - -

14 BY MR. DuPONT:

15 Q. I'm going to hand to you
16 Exhibit 20. Exhibit 20 is a February 26,
17 1965 letter from Clement Stodder, the
18 president of The Savogran Company, to
19 Savogran Pacific Corporation? Do you see
20 that?

21 A. Yes.

22 Q. All right. In the -- in the
23 first paragraph of this letter it refers to
24 an agreement dated December 22, 1950,

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01 between The Savogran Company and L.A.
02 McLean and others, which was assigned to
03 Savogran Pacific Corporation. Do you see
04 that?

05 A. Yes.

06 Q. All right. Earlier we talked
07 about there being a west coast salesperson
08 for The Savogran Company who owned the
09 Los Angeles facility. Do you remember that?

10 A. Uh-huh. Yes.

11 Q. Is that L.A. McLean?

12 A. Well, that's what I'm saying.
13 Obviously we know now it wasn't a west coast
14 salesperson. They had their own company out
15 there.

16 Q. All right.

17 A. So that clears that up.

18 Q. Well, do we know if -- do we
19 know if -- okay. Well, the agreement that
20 we looked at earlier in 1965 refers to
21 Savogran Pacific Corporation as a -- a
22 California corporation, I believe; right?

23 A. Yes.

24 Q. Okay. And here The Savogran

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01 Company, in this letter, is granting the
02 stockholders of Savogran Pacific Corporation
03 -- well, strike that.

04 It's the other way around. In
05 this letter, this is an agreement that the
06 stockholders of Savogran Pacific Corporation
07 are granting The Savogran Company basically
08 a right of first refusal, or first offer to
09 purchase stock of Savogran Pacific
10 Corporation? Is that how you read this
11 letter?

12 A. I haven't read it.

13 Q. Okay.

14 A. I'm sorry.

15 Q. Sure. In the second
16 paragraph, it says, The undersigned, being
17 stockholders of Savogran Pacific
18 Corporation, do by here -- do hereby agree
19 with The Savogran Company, for the
20 considerations herein expressed, to grant to
21 The Savogran Company, in the event that any
22 of the undersigned decide to sell any of
23 their shares of Savogran Pacific Corporation
24 to first offer such shares for purchase by

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01 The Savogran Company at the same price at
02 which such shareholders may be able to sell
03 their shares elsewhere. Do you see that?

04 A. Yes.

05 Q. Okay. So what's happening in
06 this letter is, the shareholders of Savogran
07 Pacific Corporation are agreeing that if
08 they're going to sell their shares, that
09 The Savogran Company is going to have,
10 basically, the first right to buy them.

11 A. Okay.

12 Q. Do you agree with that?

13 A. Yes.

14 Q. And by 1964, we saw in the
15 earlier exhibit, that The Savogran Company
16 was already a 20 percent shareholder of the
17 Savogran Pacific Corporation?

18 A. Yes.

19 Q. Okay. I think those are all
20 the questions I have.

21 MR. LEDGER: Anybody on the
22 phone?

23 - - -

24 BY MS. BONNEVILLE:

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01 Q. Hi, this is Jennifer
02 Bonneville. I have some questions. Sir,
03 can you hear me okay?
04 A. Yes.
05 Q. Sir, can you hear me?
06 MR. LEDGER: We can hear you.
07 THE WITNESS: Loud and clear.
08 MS. BONNEVILLE: Okay. I
09 can't hear -- I can't hear the
10 witness at all.
11 BY MS. BONNEVILLE:
12 Q. My name is Jennifer
13 Bonneville. Can you hear me?
14 MR. LEDGER: Is it better now
15 with the witness?
16 MS. BONNEVILLE: Yes.
17 BY MS. BONNEVILLE:
18 Q. Sir, my name is Jennifer
19 Bonneville. I have some questions for you.
20 I just want to make sure you
21 understand, the same rules apply. I don't
22 want you to guess or speculate if you don't
23 know things.
24 When I ask you questions about

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01 what you know, the you that I'm referring to
02 is Savogran. You understand that; correct?

03 A. Yes.

04 MS. BONNEVILLE: I can't hear
05 the witness at all. I don't know if
06 he responded.

07 MR. DuPONT: He said, yes.

08 (Discussion held off the
09 record.)

10 BY MS. BONNEVILLE:

11 Q. You were shown a few minutes
12 ago Exhibits 11 through 16 by Mr. DuPont.
13 Do you recall that?

14 A. No, we have to dig them out.

15 Q. Sir, I don't need you to
16 review them, but do you recall looking at
17 those documents, 11 through 16?

18 A. No. We got to dig them out
19 because I -- my brain is fried at this
20 point.

21 Q. Take your time, sir. Let me
22 know when you're ready.

23 A. Okay, yeah.

24 MR. LEDGER: All right, he's

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01 got them.

02 THE WITNESS: We got them.

03 BY MS. BONNEVILLE:

04 Q. You haven't seen those
05 documents before today; correct?

06 A. That's correct.

07 Q. Is that correct, sir?

08 THE WITNESS: It doesn't
09 include the Illinois one, right?

10 Because that one we've seen before,
11 right? Didn't you have that in the
12 Lee case, the Illinois ones?

13 MR. DuPONT: I'll represent to
14 you that the API documents and the
15 Rutherford T. Johnstone document are
16 not -- were not exhibits to your last
17 deposition.

18 THE WITNESS: All right.

19 So I have not seen them
20 before.

21 BY MS. BONNEVILLE:

22 Q. It's fair to say that you have
23 no information, you being Savogran, on the
24 accuracy or completeness of the information

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01 in those documents?

02 A. Correct.

03 Q. You don't know what the
04 background was of the documents, or what the
05 context was of those documents; is that
06 correct?

07 A. Correct.

08 Q. Is that correct, sir?

09 A. That's correct.

10 Q. It's fair to say you don't
11 know if those documents were or were not
12 available to Savogran at or about the time
13 they were created; is that correct?

14 A. That's correct.

15 Q. Am I correct that there's no
16 one at Savogran -- there's no one alive who
17 worked at Savogran in the sixties and
18 seventies?

19 A. That's correct.

20 Q. And, a thorough search was
21 done for records of Savogran regarding who
22 its suppliers were in the sixties and
23 seventies?

24 A. I didn't catch that question.

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01 Can you repeat that? I'm sorry.

02 Q. Sure.

03 A. You broke up.

04 Q. No problem, sir. Any time you
05 don't hear me, you let me know.

06 A. Yeah.

07 Q. Am I correct that Savogran
08 undertook a thorough search for records of
09 who its suppliers were in the sixties and
10 seventies relative to the Kutzit product?

11 A. Well, we have -- we have the
12 purchase history documents for the benzene
13 from '72 and '73.

14 Q. But you did a thorough search,
15 and that was the only document you found;
16 correct?

17 A. Correct.

18 MR. DuPONT: Objection,
19 misstates testimony.

20 BY MS. BONNEVILLE:

21 Q. Is that a correct statement?

22 COURT REPORTER: He said
23 "correct".

24 MS. BONNEVILLE: Okay. I'm

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01 not hearing the witness at all here.

02 THE WITNESS: Correct.

03 BY MS. BONNEVILLE:

04 Q. Okay. Thank you, sir.

05 Is it fair to say that there
06 was no one for you to ask about what the
07 company knew in the sixties and seventies
08 about the health hazards of benzene because
09 there's no one alive; is that correct?

10 A. That's correct.

11 Q. And there is no one for you to
12 ask about what you were -- you being
13 Savogran -- were or were not told by your
14 suppliers about the health hazards of
15 benzene. Is that correct?

16 A. That's also correct.

17 Q. In fact, you don't know what
18 information was or was not provided by
19 suppliers of benzene, or any other products
20 that went into Kutzit in the sixties and
21 seventies; is that fair?

22 A. That's correct.

23 Q. And you don't have any
24 information, because of the passage of time,

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01 available to you as to what Savogran itself
02 knew or did not know about the health
03 hazards of benzene in the sixties and
04 seventies; correct?

05 A. Correct.

06 Q. Correct, sir?

07 A. Correct.

08 Q. The only information that you
09 have is what is in the exhibits, Exhibit 8,
10 as to who its suppliers were; is that
11 correct?

12 A. Correct.

13 Q. And this is for the time
14 period of '73 to '74; correct?

15 A. Correct.

16 Q. And so you don't know if the
17 suppliers identified in Exhibit 8, if they
18 supplied to Savogran in '72 or '71 or any
19 other time period; correct?

20 A. Correct.

21 Q. Now, based on this document, f
22 you don't know who created it; is that fair?

23 A. The -- the purchase document?

24 Q. Yes. Exhibit 8.

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01 A. Yeah.

02 Q. You don't know who created
03 this document; correct?

04 A. Correct. No.

05 Q. Was there a response.

06 A. We don't know for sure.

07 Q. Okay. You don't know exactly
08 when it was prepared; correct?

09 A. No.

10 Q. And you don't know if the
11 person who prepared this, if it was part of
12 their job duties? You just don't know
13 anything about the circumstances of the
14 creation; is that fair?

15 MR. DuPONT: Objection.

16 Misstates testimony.

17 BY MS. BONNEVILLE:

18 Q. Sir, is that correct?

19 A. Correct.

20 Q. Okay. Now, in 1973 and '74,
21 the time frame of this Exhibit 8, there were
22 other products being produced in the
23 Norwood; Massachusetts facility; correct?

24 A. Correct. Correct.

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01 Q. How do you know that this
02 document relates to Kutzit?

03 A. Well, Kutzit was the only --
04 it's the only product that we know of that
05 contained benzene.

06 Q. Did you review the formulas
07 for the other products being made at the
08 Norwood, Massachusetts facility in '73 to
09 '74?

10 A. Well, anything we could find
11 in the -- you know, in the record,
12 definitely.

13 Q. And do you know, based on
14 Exhibit 8, if Savogran was ordering a blend
15 of benzene and acetone, or if they were
16 ordering benzene and acetone and blending it
17 themselves? Do you know that one way or the
18 other?

19 A. That I don't.

20 Q. Was there an answer?

21 A. I don't. I don't know.

22 Q. Looking at Exhibit 8, there's
23 date, vendor number and order numbers.

24 Correct, sir, if you look at the first page,

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01 123?

02 A. Yes.

03 Q. And based on your experience

04 with Savogran, you would expect for those

05 order numbers that there would have been

06 some form of purchasing paperwork that would

07 have gone with that. Is that fair?

08 A. Yes.

09 Q. And then looking at the second

10 page, 124.

11 A. Yes.

12 Q. Do you see those same order

13 numbers. And there would have been records,

14 some form paperwork when the products were

15 received; correct?

16 A. Yes.

17 Q. And none of that paperwork is

18 available anymore; correct?

19 A. That is correct.

20 Q. So whatever -- for example,

21 AMSCO sent, when it supplied product, you

22 just don't have that information, or those

23 documents just aren't available. Correct?

24 A. Correct.

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01 Q. Now, Kutzit was formulated by

02 Savogran; correct?

03 A. Yes.

04 Q. And Savogran decided what

05 would go into the product and what

06 percentage of the components would go in the

07 product; correct?

08 A. Yes.

09 Q. And Savogran would have

10 decided who they were going to purchase from

11 and who they weren't going to purchase from;

12 correct?

13 A. Yes.

14 Q. Is that correct, sir?

15 A. Yes.

16 Q. I can't hear if there was an

17 answer.

18 A. Yes.

19 MR. DuPONT: He said yes.

20 BY MS. BONNEVILLE:

21 Q. Thank you.

22 Is it fair to say that the

23 information on how Savogran selected its

24 suppliers back in the sixties and the

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01 seventies, that that information is just no
02 longer available.

03 A. That is correct.

04 Q. And when you started with the
05 company in 1987, you started as a chemist;
06 correct?

07 A. Yes.

08 Q. And Savogran had chemists on
09 staff prior to you being there; correct?

10 A. My -- my boss, John Gale, was
11 a chemist.

12 Q. And do you know if there was a
13 chemist before John?

14 A. No. I don't know.

15 Q. You don't know?

16 A. No. You got to remember,
17 Savogran is a really small company. I mean,
18 you guys --

19 Q. Right.

20 A. -- have different impressions
21 of who we are, I think. You know, we're --
22 we're minuscule.

23 Q. And Savogran was -- you were
24 started on the east coast; correct?

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01 A. Yes.
02 Q. Started in Massachusetts?
03 A. Correct.
04 Q. And, over time, Savogran
05 expanded to Illinois, Chicago, and then
06 there was a California location; correct?
07 A. Correct.
08 Q. And Savogran doesn't have any
09 record of shipping Kutzit to California in
10 the sixties and seventies; correct?
11 A. That's correct.
12 Q. And it doesn't have any
13 records of shipping Kutzit to Savogran
14 Pacific in the sixties and seventies.
15 That's right too, isn't it?
16 A. Correct.
17 Q. When you joined in 1987, was
18 there an industrial hygiene -- hygiene
19 program in place at Savogran?
20 A. Not -- there's a hazardous
21 communications program.
22 Q. Did that program, as far as
23 you can tell, predate your employment?
24 A. Yes.

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01 Q. I'm sorry, but was there a
02 response? I'm not hearing anything.

03 A. Yes.

04 Q. Do you know how long there has
05 been a HazCom or hazard communication
06 program at Savogran?

07 A. I don't.

08 Q. Savogran is owned by its
09 employees; correct?

10 A. Yes. We're a hundred percent
11 employee owned.

12 Q. And the health and safety of
13 those employees, that's important to
14 Savogran, isn't it?

15 A. Yes.

16 Q. And the health and safety of
17 its customers, that's equally important to
18 Savogran; isn't it?

19 A. Yes.

20 Q. And part of the reason that
21 Savogran has been in business for over a
22 hundred years is, it has a solid
23 understanding of its product, and how those
24 products are being used in the marketplace;

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01 correct?

02 A. Quality, reputation.

03 MR. DuPONT: Objection.

04 THE WITNESS: All of the

05 above.

06 MR. DuPONT: Vague.

07 Foundation.

08 BY MS. BONNEVILLE:

09 Q. And Kutzit was not the first

10 paint remover that Savogran developed;

11 correct?

12 A. No.

13 Q. Right, I'm correct?

14 A. It was not.

15 Q. It was not the first?

16 A. No.

17 Q. And Savogran has had other

18 paint removers since Kutzit; correct?

19 A. Yes.

20 Q. And, over time, Savogran has

21 changed the formulation of its products, has

22 reformulated its products; is that correct?

23 A. Yes.

24 MR. DuPONT: Objection, vague.

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01 THE WITNESS: We just -- as a
02 matter of fact, we just reformulated
03 them last year. In other words, we
04 --

05 BY MS. BONNEVILLE:

06 Q. There's a variety of reasons
07 why Savogran does that; correct?

08 A. Yes.

09 Q. Part of it is to make sure the
10 product was safe, make sure that you're
11 keeping up with what the market demands;
12 right?

13 A. Yes.

14 MR. DuPONT: Objection, vague.

15 THE WITNESS: Regulations --

16 BY MS. BONNEVILLE:

17 Q. I want to ask you a couple of
18 -- I want to ask you a couple of questions
19 about the manufacture of Kutzit. You
20 indicated, at least when you started in '87,
21 that there were storage tanks, underground
22 storage tanks. Is that correct?

23 A. Yes.

24 Q. How long have those storage

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01 tanks been in place; if you know?

02 A. In Norwood or in --

03 Q. In Norwood.

04 A. -- or in California?

05 Q. Norwood.

06 A. Oh, Norwood. Well, they were

07 -- when I got there -- you know, I'm not

08 really sure. We replaced them in 2001. I

09 can tell you that.

10 Q. Okay. Do you know if that was

11 the first time they had been replaced?

12 A. I think that was the third.

13 Q. Do you know, were they

14 replaced about every 20 years or so?

15 A. Yes.

16 Q. So the third replacement would

17 have been 2000? The tanks probably would

18 have gone back to the fifties? Is that a

19 fair estimate?

20 A. It's possible.

21 Q. Are you aware of raw materials

22 being transferred between Savogran

23 manufacturing facilities in the sixties and

24 seventies?

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01 A. No.

02 Q. So if a raw material like
03 benzene was received in Norwood, it was used
04 in Norwood for products?

05 A. Right. Well, they didn't have
06 the faci --

07 Q. Correct?

08 A. The company didn't have a tank
09 wagon to move solids around.

10 Q. And Savogran doesn't have any
11 information on who supplied raw materials to
12 Illinois or California in the sixties and
13 seventies; correct?

14 MR. DuPONT: Objection,
15 foundation.

16 THE WITNESS: Correct.

17 BY MS. BONNEVILLE:

18 Q. And I believe -- I think this
19 came out of your prior deposition, but
20 Savogran has no way to track whether or not
21 benzene, if it came from a supplier, ended
22 up a specific container of Kutzit; is that
23 correct? There's no way to trace it through
24 the process?

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01 MR. DuPONT: Objection.

02 Misstates testimony, lacks
03 foundation.

04 THE WITNESS: That's correct.

05 The company's never done lot
06 tracking.

07 BY MS. BONNEVILLE:

08 Q. Okay. My understanding from
09 Exhibit 8, when we look at page two and page
10 three, which were those inventory records,
11 they show a shipment of benzene coming in
12 from the different suppliers, they were then
13 added to the same tank before than tank was
14 completely empty; is that correct?

15 A. Yes. Yes.

16 Q. So there was mixing between
17 benzene that you received from Houghton and
18 benzene you received from AMSCO. Is that
19 correct?

20 A. Yes.

21 Q. And if we look at the first
22 page of Exhibit 8 -- do you have that in
23 front of you, sir?

24 A. I do.

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01 Q. I'm looking at the page that's
02 been Bates stamped Savogran 123.

03 A. Yes.

04 Q. If you look at the third --
05 the third entry down.

06 A. Yes.

07 Q. It looks to me like it has a
08 date of December 1st, '72. Do you see that
09 one?

10 A. I do.

11 Q. It has the word AMSCO. Do you
12 see that?

13 A. Yes.

14 Q. And if you look across, it
15 says, not available under quantity received.
16 Do you see that?

17 A. Yes.

18 Q. So for that particular one, no
19 quantity was received. Is that a fair
20 interpretation?

21 MR. DuPONT: Objection,
22 foundation.

23 THE WITNESS: It's possible.

24 BY MS. BONNEVILLE:

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01 Q. And the different
02 manufacturing facilities that Savogran has,
03 they sell products in different areas; is
04 that correct? Your geographic areas?

05 A. Yes.

06 MR. DuPONT: Objection. Vague
07 as to time.

08 BY MS. BONNEVILLE:

09 Q. And in the sixties and
10 seventies, the Norwood, Massachusetts
11 facility, it sold products on the east
12 coast; is that correct?

13 A. Yes.

14 Q. Do you have any reason to
15 believe that Savogran Norwood, Massachusetts
16 facility shipped products to California in
17 the sixties and seventies?

18 A. None.

19 Q. Do you believe it's likely
20 that any Savogran products that were sold in
21 California in the sixties and seventies
22 would have been manufactured by Savogran
23 Pacific?

24 MR. DuPONT: Objection, lacks

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01 foundation.

02 THE WITNESS: Yeah, I don't --

03 I don't know one way or the other.

04 There is -- there is no way of

05 knowing at this point.

06 BY MS. BONNEVILLE:

07 Q. Do you know that product

08 manufactured in the sixties and seventies in

09 Norwood, Massachusetts, those wouldn't have

10 been shipped to California. Those would

11 have been kept on the east coast; correct? :

12 MR. DuPONT: Objection. That

13 assumes facts. That lacks

14 foundation. That calls for

15 speculation.

16 THE WITNESS: I don't know one

17 way or the other. There's -- there's

18 really no way of knowing at this

19 point?

20 BY MS. BONNEVILLE:

21 Q. There's just no documents

22 available; correct?

23 A. That's correct.

24 MR. DuPONT: That's also not

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01 true.

02 BY MS. BONNEVILLE:

03 Q. And there's no one available
04 who has knowledge from that time frame;
05 correct?

06 A. Correct.

07 Q. Sir, do you know what, if any,
08 trade group Savogran belonged to in the
09 sixties and the seventies?

10 A. I don't. When I -- when I
11 came on the company in 1987 they belonged to
12 the National Paint and Coatings Association
13 and also the Associated Industries of
14 Massachusetts.

15 Q. Do you have any sense of how
16 long they were members of those groups?

17 A. I don't.

18 Q. Sir, that's all the questions
19 I have for you. Thank you for your time and
20 patience.

21 MR. DuPONT: Anyone else on
22 the phone?

23 (No response.)

24 MR. DuPONT: If nobody else on

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01 the phone has questions, I have a few
02 follow-ups.

03 - - -

04 MR. LEDGER: Can we take a
05 break for just two minutes? We'll be
06 right back in.

07 MR. DuPONT: Sure.

08 VIDEO TECHNICIAN: Time is
09 3:42. We're off the record.

10 (Whereupon there was a recess
11 in the proceeding.)

12 VIDEO TECHNICIAN: This is the
13 beginning of media unit five. We're
14 back on the record. The time is
15 3:45.

16 BY MR. DuPONT:

17 Q. All right. Mr. Monique,
18 Andrew DuPont again. I have some follow-up
19 questions.

20 Just for accuracy's purpose,
21 counsel for Ashland and American Mineral
22 Spirits Company, now known as Unocal, asked
23 you about Exhibits 11 through 16 and asked
24 you whether you had seen them before. Just

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01 to be clear, Exhibits 14,15 and 16 were
02 documents that you had been provided as an
03 exhibit in your deposition in 2016; is that
04 correct?

05 A. Yes.

06 Q. All right.

07 A. Those are the ones I asked
08 about during that --

09 Q. Yes, thanks.

10 And just for clarity as well,
11 documents that were marked as Exhibits 11
12 through 16, even though you don't have
13 knowledge outside of what's in the documents
14 about what was going on, you -- we can look
15 at the documents and determine what the
16 context of what was happening was from
17 what's written in the documents. Is that
18 fair?

19 MS. BONNEVILLE: Objection,
20 calls for speculation.

21 MR. LEDGER: Objection, calls
22 for speculation. The document speaks
23 for itself.

24 MR. HERNAN: Join.

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01 THE WITNESS: Yes.

02 BY MR. DuPONT:

03 Q. All right. You were asked
04 about the -- whether there was anybody who
05 is still around who worked Savogran in the
06 1960s and 1970s. But you have spoken to
07 individuals who did work for Savogran at
08 least during the 1970s. For example, Tom
09 Little was a gentleman who --

10 A. Right.

11 Q. And Mr. Little began to work
12 for The Savogran Company in 1972?

13 A. It was '72, '73 or '74. In
14 that range.

15 Q. All right. And he's an
16 individual that you had spoken with in the
17 past in order to educate yourself about
18 Savogran's history?

19 A. Right.

20 Q. The Exhibit 8, the purchase
21 records and inventory records.

22 A. Yes.

23 Q. You're familiar with the forms
24 of those records because you had seen them

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01 used at The Savogran Company?

02 A. Yes.

03 Q. And that is the type of record
04 that Savogran has prepared, filled out and
05 relied upon in the course of doing business?

06 A. Yes.

07 Q. And it was in --

08 MS. BONNEVILLE: Objection,
09 speculation. Vague as to time.

10 BY MR. DuPONT:

11 Q. And it's your understanding
12 that that is a -- the type of document where
13 Savogran would use to contemporaneously
14 record information about making purchases of
15 product, receiving product and measuring the
16 inventory of product?

17 A. Yes.

18 Q. All right. And that --

19 MS. BONNEVILLE: Objection,
20 calls for speculation.

21 BY MR. DuPONT:

22 Q. And there are dates where
23 entries were made into forms on Exhibit 8;
24 is that right.

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01 A. Yes.

02 Q. And it was the practice of
03 Savogran to enter the information on these
04 forms at the date that the event was
05 happening?

06 MS. BONNEVILLE: Objection.
07 Calls for speculation. Vague as to
08 time. Lacks foundation.

09 MR. HERNAN: Join.

10 THE WITNESS: Yes.

11 BY MR. DuPONT:

12 Q. At or around the date
13 generally?

14 A. Yes.

15 Q. Okay. And even though you
16 don't know the specific name of the person
17 who wrote the information on Exhibit 8, it
18 is your understanding that it was an
19 employee of Savogran acting in the course of
20 their employment that would have wrote that
21 information out?

22 MR. LEDGER: Calls for
23 speculation.

24 MS. BONNEVILLE: Objection.

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01 Calls for speculation.

02 BY MR. DuPONT:

03 Q. And, in fact, you found those
04 records that are marked as Exhibit 8 because
05 you recognized that they were stored in a
06 cabinet that was kept at the desk of Ms. --
07 was it Kowalski?

08 A. Yes.

09 Q. Whose job it was to order
10 product on behalf of -- of your boss at the
11 time?

12 A. Yes.

13 Q. All right. And she had been
14 -- she had that job before you began with
15 Savogran as well?

16 A. Yes.

17 Q. Do you recall when she began
18 -- when Ms. Helen Kowalski began to work for
19 Savogran?

20 A. Absolutely not, no.

21 Q. Was she somebody that began to
22 work at Savogran in the 1960s?

23 You don't know?

24 A. I don't know. She had been

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01 there a long time.

02 Q. She had been there a long time

03 --

04 A. Yeah.

05 Q. -- before 1987?

06 A. Yeah.

07 Q. Now, you were asked whether

08 Savogran had any record of shipping the

09 Kutzit product to California. Does Savogran

10 still have any record of shipping the Kutzit

11 product to Massachusetts during the 1960s

12 and 1970s?

13 A. No.

14 Q. All right.

15 MS. BONNEVILLE: Objection.

16 BY MR. DuPONT:

17 Q. So the fact -- but certainly

18 it was selling Kutzit in Massachusetts in

19 the 1960s and 1970s.

20 A. Yes.

21 Q. All right. So just because

22 you don't have record of shipping Savogran's

23 Kutzit product into California in the 1960s

24 and 1970s doesn't mean it didn't happen;

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01 right?

02 MS. BONNEVILLE: Objection.

03 Calls for speculation.

04 THE WITNESS: Yeah, I wouldn't
05 know.

06 BY MR. DuPONT:

07 Q. You were asked about whether
08 you could determine whether the benzol
09 acetone blend that was used in Kutzit from a
10 particular supplier made it into a
11 particular container of the Kutzit product.
12 Do you agree with me that if you can look at
13 the purchase records and the inventory
14 records and match up when an order of the
15 ninety percent benzol and 10 percent acetone
16 blend was received, put into inventory and
17 then when that inventory was used?

18 A. Yes.

19 Q. And it was the practice of
20 Savogran to nearly essentially deplete the
21 contents of the underground storage tank
22 that kept the particular chemical before
23 taking on a new shipment of it?

24 A. Well, the idea --

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01 MS. BONNEVILLE: Objection,
02 misstates testimony.

03 BY MR. DuPONT:

04 Q. All right --

05 A. You got to make sure you have
06 enough room in the tank --

07 Q. Okay.

08 A. For what you were ordering.

09 Q. All right. And if we look
10 through the inventory, we can spot instances
11 where the inventory is down to only, say,
12 for example, 115 gallons out of a five or
13 six thousand gallon capacity by the time a
14 new order comes in; correct?

15 A. Right.

16 Q. So, even though there may have
17 been a tiny bit of blend left in the tank
18 when a new shipment was received, the vast
19 majority came from the new shipment?

20 MS. BONNEVILLE: Objection,
21 calls for speculation.

22 THE WITNESS: Yeah, I don't
23 know if you could make that
24 assumption, but yeah.

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01 BY MR. DuPONT:

02 Q. Well, for example, if the
03 inventory had 115 gallons in it, you get a
04 shipment and then all of a sudden you have
05 6051 gallons in the inventory, it would be
06 reasonable to conclude that over 5900
07 gallons of the shipment came from that
08 particular -- 6500 gallons -- strike that.

09 It would be reasonable to
10 conclude that where you have, for example,
11 115 gallons of the benzene/acetone blend in
12 stock, and then that inventory jumps up to
13 6051 gallons, that over 5900 gallons of the
14 inventory came from that new shipment?

15 A. Whatever the percentage is.

16 Q. And then that inventory that
17 resulted from the new shipment is what went
18 into the containers of the Kutzit product
19 until that inventory was depleted; fair?

20 A. Right.

21 Q. So at least during that period
22 of time, when that inventory from the new
23 shipment was being used and put into the
24 Kutzit product, you can tell which supplier

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01 -- which supplier's benzene/acetone blend
02 went into the containers?

03 A. Right.

04 MS. BONNEVILLE: Objection,
05 calls for speculation.

06 BY MR. DuPONT:

07 Q. We discussed the agreement
08 between Savogran Company and Savogran
09 Pacific Corporation. We discussed that that
10 agreement provided for Savogran Pacific
11 Corporation to purchase product manufactured
12 by The Savogran Company at the Norwood,
13 Massachusetts facility; correct?

14 A. Yes.

15 Q. So that is an indication that
16 it was at least anticipated by the two
17 parties that The Savogran Company would be
18 manufacturing product in Norwood,
19 Massachusetts to be sold in the western part
20 of the country, west of the Rockies,
21 including California, by Savogran Pacific
22 Corporation?

23 MR. LEDGER: Objection, calls
24 for speculation.

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01 MS. BONNEVILLE: Objection,
02 calls for speculation.

03 THE WITNESS: It certainly
04 left open the opportunity. But it
05 doesn't necessarily mean that it ever
06 occurred.

07 BY MR. DuPONT:

08 Q. Okay.

09 A. Well, it was something -- it
10 was something that they were planning for.
11 Fair?

12 MR. LEDGER: Objection, calls
13 for speculation.

14 THE WITNESS: Something that
15 they had written into the document,
16 yes.

17 BY MR. DuPONT:

18 Q. Right.

19 A. But again, it doesn't
20 necessarily mean that it actually, you know,
21 happened.

22 Q. All right. Thank you very
23 much.

24 MR. LEDGER: Anybody else on

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01 the phone?

02 (No response.)

03 MR. LEDGER: All right. I

04 think we're done.

05 Let's stipulate that the court

06 reporter will be relieved of her

07 duties under the California Code of

08 Civil Procedure.

09 The original deposition

10 transcript can be sent to my office.

11 I will make sure Mr. Monique has the

12 opportunity to review it, read it,

13 make any changes or corrections in it

14 that he feels are necessary and sign

15 the same as if under oath within two

16 weeks? Is that enough time? Is that

17 all right?

18 MR. DuPONT: I think so.

19 Trial is the 24th. So that will take

20 it out to -- yes, that will be all

21 right.

22 MR. LEDGER: Notify my office

23 of any changes or corrections. I

24 will notify all counsel of any

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01 changes or corrections within three
02 days of my receipt.

03 If for any reason the original
04 deposition transcript is unavailable
05 at the time of trial, a certified
06 unsigned copy may be used in lieu of
07 the original. And I will maintain --
08 I will send the original back to Mr.
09 DuPont. He will maintain custody of
10 it to be produced upon reasonable
11 request at the time of trial or for
12 any other required proceeding.

13 MR. DuPONT: I stipulate to
14 the stipulation.

15 MR. LEDGER: So stipulated
16 everybody?

17 MS. FOLINO: Stipulated.

18 MS. BONNEVILLE: So
19 stipulated.

20 VIDEO TECHNICIAN: We're going
21 off the record at 3:56.

22 - - -

23 (Witness excused.)

24 - - -

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01 (Deposition concluded at

02 00:00 a/p.m.)

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01 C E R T I F I C A T E

02

03

04 I do hereby certify that I am a
05 Notary Public in good standing, that the
06 aforesaid testimony was taken before me,
07 pursuant to notice, at the time and place
08 indicated; that said deponent was by me duly
09 sworn to tell the truth, the whole truth,
10 and nothing but the truth; that the
11 testimony of said deponent was correctly
12 recorded in machine shorthand by me and
13 thereafter transcribed under my supervision
14 with computer-aided transcription; that the
15 deposition is a true and correct record of
16 the testimony given by the witness; and that
17 I am neither of counsel nor kin to any party
18 in said action, nor interested in the
19 outcome thereof.

20 WITNESS my hand and official seal
21 this 25th day of April, 2019.

22

23

24

25 ATXnt1024016 \ATXnt0 <%1,Signature%>

26

27 _____
28 Notary Public

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30

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01 INSTRUCTIONS TO WITNESS

02

03 Please read your deposition over
04 carefully and make any necessary
05 corrections. You should state the reason in
06 the appropriate space on the errata sheet
07 for any corrections that are made.

08 After doing so, please sign the
09 errata sheet and date it.

10 You are signing same subject to the
11 changes you have noted on the errata sheet,
12 which will be attached to your deposition.

13 It is imperative that you return the
14 original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

20

21

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23

24

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01 - - - - -
02 E R R A T A
03 - - - - -
04 PAGE LINE CHANGE
05 - - - - - - - - - - - - - - - - -
06 Reason for Change:
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15 Reason for Change:
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18 Reason for Change:
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21 Reason for Change:
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24 Reason for Change:
25 Job No. PA3311053
26 -----

Transcript of Monique, Mark

Monique, Mark

Rhyne Trial Master

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01

02 ACKNOWLEDGMENT OF DEPONENT

03 I, _____, do

04 hereby certify that I have read the

05 foregoing pages __ to __ and that the same

06 is a correct transcription of the answers

07 given by me to the questions therein

08 propounded, except for the corrections or

09 changes in form or substance, if any, noted

10 in the attached Errata Sheet.

11

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13 DATE

SIGNATURE

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